

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. BOARD OF MEDICAL EXAMINERS

PREAMBLE

1. Sections Affected

R4-16-102
R4-16-102
R4-16-106
R4-16-107
R4-16-108

Rulemaking Action

Repeal
New Section
New Section
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 32-1403(A)(8) and 1404(D)

Implementing statutes: A.R.S. §§ 41-1062(B), 41-1092.09, 32-1425.01(A)(3), 32-1427(A) and 32-1429(A)(2)

3. The effective date of the rules:

May 3, 2000

4. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 2061, June 25, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 2305, July 23, 1999

Notice of Supplemental Proposed Rulemaking: 5 A.A.R. 4570, December 10, 1999

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Dominick Spatafora, Public and Regulatory Relations Administrator

Address: Arizona Board of Medical Examiners
1651 E. Morten, Suite 210
Phoenix, Arizona 85020

Telephone: (602) 674-2700, ext. 2712

Fax: (602) 870-5297

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Arizona Board of Medical Examiners (Board) is created to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of allopathic medicine (A.R.S. § 32-1403(A)). A.R.S. § 32-1403(A)(8) authorizes the Board to make rules to regulate the practice of medicine, including qualifications of physicians. A.R.S. § 32-1404(D) authorizes the Board to adopt administrative hearing rules consistent with A.R.S. § 41-1001 et seq.

The Board initiated the rulemaking for 2 reasons. First, rulemaking action on R4-16-102 incorporates the recommendations made in a February 1998 5-year rule review. Recommendations include amending the rule to be consistent with current rulewriting standards and conforming it to current law. R4-16-102 is the subject of an Arizona Court of Appeals decision in *Dioguardi v. Arizona Board of Medical Examiners*, 184 Ariz. 414, 909 P.2d 481 (App. 1996). The Court of Appeals held that R4-16-106 (which is now renumbered as R4-16-102) did not comply with the time requirements of A.R.S. § 41-1062(B) and the rules of civil procedure. The Court determined that the appellant was entitled to 15 days within which to file a request for rehearing instead of the 10 days allowed by rule.

Second, proposed rules are created that prescribe application forms for: (1) general licensure, (2) pro bono registration, and (3) locum tenens registration. Although these application forms exist, were approved by the Board, and are currently in use, the Board is prescribing them in rule to address a recent statement made by the Arizona Office of the Auditor General that licensing application forms must be prescribed in rule as required by statute. A locum tenens registration authorizes an out-of-state physician to temporarily assist or substitute for an Arizona physician. A pro bono registration allows physicians who are not Arizona licensees to practice in Arizona for 60 days, provided they meet certain requirements, such as not being the subject of an unresolved complaint in any jurisdiction.

7. A reference to any study that the agency relied on in its evaluation of or jurisdiction for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The rule has a minimal financial impact. The Arizona Board of Medical Examiners will bear a minimal cost for writing the rule and fulfilling requirements imposed by the Governor's Regulatory Review Council and the Secretary of State's Office, and for public comments from the regulated community and interested parties regarding the rulemaking. The Secretary of State's Office will also bear a minimal financial impact for staff time and for printing.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

After a thorough review of the amended R4-16-102 proposed rule the Board determined that the rule was confusing and lacked certain necessary elements. Thus a supplemental proposed rule reorganized the rule and included additional information. The supplemental proposed rule was published in a Notice of Supplemental Rulemaking on December 10, 1999, in the *Arizona Administrative Register*.

R4-16-106 through R4-16-108 also needed reorganization and are now much more concise, clear, and understandable. Although no substantive changes are made to the rules, significant reorganizational changes are published in a Notice of Supplemental Rulemaking, 5 A.A.R. 4570. Additionally, the Board is making 3 technical changes to the rule since the supplemental proposed rule was filed with the Secretary of State:

Table of Contents

Replaced the heading, "Step three of the United States medical licensing examination; Application," with the heading, "Application for Licensure."

Replaced the heading, "General Applicants; Application," with the heading, "Application for Pro Bono Registration."

Replaced the heading, "Locum tenens and pro bono applicants; Application," with the heading, "Application for Locum Tenens Registration."

In addition to the changes listed above, other minor technical changes were made throughout the rules to improve clarity, grammar, and consistency as suggested by the G.R.R.C. staff.

11. A summary of the principal comments and the agency response to them:

No comments were received

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. BOARD OF MEDICAL EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Arizona Administrative Register
Notices of Final Rulemaking

Section

- R4-16-102. Rehearing or Review of Board Decision
R4-16-106. Renumbered Application for Licensure
R4-16-107. Application for Pro Bono Registration
R4-16-108. Application for Locum Tenens Registration

ARTICLE 1. GENERAL PROVISIONS

R4-16-102. Rehearing or Review of Board Decision

- ~~A.~~ Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than ten days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known address of record party at his last known residence or place of business.
- ~~B.~~ A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. Any other party may file a response may be filed within ten days after service of the such motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- ~~C.~~ A rehearing or review of a the decision may be granted for any of the following causes materially affecting the moving party's rights:
- ~~1.~~ Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 - ~~2.~~ Misconduct of the Board or its hearing officer or the prevailing party;
 - ~~3.~~ Accident or surprise that which could not have been prevented by ordinary prudence;
 - ~~4.~~ Newly discovered material evidence that which could not with reasonable diligence have been discovered and produced at the original hearing;
 - ~~5.~~ Excessive or insufficient penalties;
 - ~~6.~~ Error in the admission or rejection of evidence or other errors of law that occurred occurring at the administrative hearing;
 - ~~7.~~ That the decision is not justified by the evidence or is contrary to law.
- ~~D.~~ The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- ~~E.~~ Not later than ten days after a decision is rendered, the Board may on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds therefor.
- ~~F.~~ When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within ten days after such service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- ~~G.~~ If, in a particular decision, the Board makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.
- ~~H.~~ For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.
- ~~I.~~ To the extent that the provisions of this Rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Board, such statutory provisions shall govern.
- A. A motion for rehearing or review shall be filed as follows:
1. Except as provided in subsection (B), any party in a contested case may file a written motion for rehearing or review of the Board's decision, specifying generally the grounds upon which the motion is based.
 2. A motion for rehearing or review shall be filed with the Board and served no later that 30 days after the decision of the Board.
 3. For purposes of this Section, "service" has the same meaning as in A.R.S. § 41-1092.09.
 4. For purposes of this Section, a document is deemed filed when the Board receives the document.
 5. For purposed of the Section, the terms "contested case" and "party" shall have the same meaning as in A.R.S. § 41-1001.
- B. If the Board makes a specific finding that it is necessary for a particular decision to take immediate effect to protect the public health and safety, or that a rehearing or review of the Board's decision is impracticable or contrary to the public

interest, the decision shall be issued as a final decision without opportunity for rehearing or review and shall be a final administrative decision for purposes of judicial review.

- C.** A written response to a motion for rehearing or review may be filed and served within 15 days after service of the motion for rehearing or review. The Board may require the filing of written briefs upon any issues raised in the motion and may provide for oral argument.
- D.** A rehearing or review of a decision may be granted for any of the following reasons materially affecting a party's rights:
1. Irregularity in the administrative proceedings by the Board, its hearing officer, or the prevailing party, or any ruling or abuse of discretion, that deprives the moving party of a fair hearing;
 2. Misconduct of the Board, its hearing officer, or the prevailing party;
 3. Accident or surprise that could have not been prevented by ordinary prudence;
 4. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence, or other errors of law that occurred at the hearing;
 7. The decision is the result of a passion or prejudice; or
 8. The decision of findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** A rehearing or review may be granted to all or any of the parties and on all or part of the issues for any of the reasons in subsection (D). The Board may take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and affirm, modify, or reverse the original decision.
- F.** A rehearing or review, if granted, shall be a rehearing or review only of the question upon which the decision is found erroneous. An order granting a rehearing or review shall specify with particularity the grounds for the order.
- G.** Not later than 15 days after a decision is issued, the Board of its own initiative may order a rehearing or review for any reason that it might have granted a rehearing or review on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a timely-served motion for a rehearing or review, for a reason not stated in the motion. In either case, the Board shall specify in the order the grounds for the rehearing or review.
- H.** If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. The opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days either by the Board for good cause, or by the parties by written stipulation. The Board may permit reply affidavits.

R4-16-106. Renumbered Application for Licensure

- A.** For purposes of this Article, unless otherwise specified:
1. "ECFMG" means Educational Commission for Foreign Medical Graduates.
 2. "FLEX" means Federation Licensing Examination.
 3. "LMCC" means Licentiate of the Medical Council of Canada.
 4. "Medical Condition" means the following physiological, mental, or psychological conditions or disorders: (a) chronic and uncorrected orthopedic, visual, speech, or hearing impairments; (b) cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, HIV disease, or tuberculosis; or (c) specific learning disabilities, dementia, Alzheimer's, bipolar disorder, schizophrenia, paranoia, or any psychotic disorder.
 5. "SPEX" means Special Purposes Examination.
 6. "USMLE" means United States Medical Licensing Examination.
- B.** An applicant for licensure to practice medicine by endorsement, Step 3 of the USMLE, or by endorsement with the SPEX shall submit the following information on an application form provided by the Board:
1. Applicant's full name, social security number, business and home addresses, business and home telephone numbers, and date and place of birth;
 2. Names of the states or provinces in which the applicant has applied for or has been granted a license or registration to practice medicine, including license number, date issued, and current status of the license;
 3. Whether the applicant has had an application for medical licensure denied or rejected by another state or province licensing board, and if so, an explanation;
 4. Whether any disciplinary or rehabilitative action has ever been taken against the applicant by another licensing board, including other health professions, and if so, an explanation;
 5. Whether any disciplinary actions, restrictions, or limitations have been taken against the applicant while participating in any type of training program or by any health care provider, and if so, an explanation;
 6. Whether the applicant has been found in violation of a statute, rule, or regulation of any domestic or foreign governmental agency, and if so, an explanation;
 7. Whether the applicant is currently under investigation by any medical board or peer review body, and if so, an explanation;
 8. Whether the applicant has ever had a medical license disciplined resulting in a revocation, suspension, limitation, restriction, probation, voluntarily surrender, cancellation during an investigation or entered into a consent agreement or stipulation, and if so, an explanation;
 9. Whether the applicant has had hospital privileges revoked, denied, suspended, or restricted, and if so, an explanation;

Arizona Administrative Register
Notices of Final Rulemaking

10. Whether the applicant has been named as a defendant in a malpractice matter currently pending or that resulted in a settlement or judgment against the applicant, and if so, an explanation;
 11. Whether the applicant has been subjected to any regulatory disciplinary action, including censure, practice restriction, suspension, sanction, or removal from practice, imposed by any agency of the federal or state government, and if so, an explanation;
 12. Whether the applicant has had the authority to prescribe, dispense, or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency, and if so, an explanation;
 13. Whether the applicant, within the last 5 years, has or had a medical condition that impairs or limits the applicant's ability to safely practice medicine, and if so, an explanation;
 14. Whether the applicant engages in the illegal use of any controlled substance, habit-forming drug, or prescription medication, and if so, an explanation;
 15. Whether the applicant has consumed intoxicating beverages resulting in the applicant's present ability to exercise the judgment and skills of a medical professional, being impaired or limited, and if so, an explanation;
 16. Whether the applicant has been found guilty or entered into a plea of no contest to a felony, or misdemeanor involving moral turpitude in any state, and if so, an explanation;
 17. A complete list of the applicant's internship, residency, and fellowship training;
 18. Whether the applicant is currently certified by any of the American Board of Medical Specialties;
 19. The applicant's intended specialty;
 20. Consistent with the Board's statutory authority, other information the Board may deem necessary to fully evaluate the applicant;
 21. A photograph of passport quality no larger than 2 1/2 x 3 inches taken not more than 60 days before the date of application; and
 22. A notarized statement, signed by the applicant, verifying the truthfulness of the information provided, and that the applicant has not engaged in any acts prohibited by Arizona law or Board rules, and authorizing release of any required records or documents to complete application review.
- C.** In addition to the application form, an applicant for licensure to practice medicine by endorsement, Step 3 of the USMLE, or endorsement with the SPEX shall submit the following:
1. Certified copy of the applicant's birth certificate or passport;
 2. Certified evidence of legal name change if the applicant's legal name is different from that shown on the document submitted under subsection (B)(1);
 3. Complete list of all hospital affiliations and employment for the past 5 years;
 4. Verification of any medical malpractice matter currently pending or resulting in a settlement or judgment against the applicant, including a copy of the complaint and either the agreed terms of settlement or the judgment. The verification must contain the name and address of each defendant, the name and address of each plaintiff, the date and location of the occurrence which created the claim and a statement specifying the nature of the occurrence resulting in the medical malpractice action; and
 5. The fee required in A.R.S. § 32-1436.
- D.** In addition to the requirements of subsections (A) and (B), an applicant for licensure to practice medicine by endorsement, by Step 3 of the USMLE, or by endorsement with the SPEX shall have the following directly submitted to the Board:
1. The following forms must be included with the application and be completed by persons other than the applicant:
 - a. Medical College Certification,
 - b. Postgraduate Training Certification,
 - c. Clinical Instructor Certification,
 - d. ECFMG certification if applicant is an international graduate,
 - e. Federation of State Medical Boards Disciplinary Search,
 - f. American Medical Association Physician Profile, and
 - g. Verification of American Board of Medical Specialty Certification, if applicable;
 2. Examination and Board History Report scores for USMLE, FLEX, and SPEX;
 3. Verification of LMCC exam score, state written exam score, or national board exam score;
 4. Verification of licensure from every state in which the applicant has ever held a medical license; and
 5. Verification of all hospital affiliations and employment for the past 5 years. This must be submitted by the verifying entity on its official letterhead.

R4-16-107. Application for Pro Bono Registration

- A.** An applicant for a pro bono registration to practice medicine shall submit an application on a form provided by the Board that provides the information required by R4-16-106(B).
- B.** In addition to the application, an applicant for a pro bono registration to practice medicine shall submit the following:
1. Certified copy of the applicant's medical degree diploma;
 2. Certified copies of internship, residency, or fellowship certificates;

Notices of Final Rulemaking

3. Photocopy of any current license to practice medicine in another state, territory, or possession of the United States or the District of Columbia, along with a letter from the medical board issuing the license, certifying that the license is current and in good standing;
4. Certified copy of ECFMG certificate, if applicable;
5. The fee required in A.R.S. § 32-1436.
- C. In addition to the requirements of subsections (A) and (B), an applicant for pro bono registration shall have the following directly submitted to the Board:
 1. American Medical Association physician profile;
 2. Federation of State Medical Boards disciplinary search; and
 3. Verification of licensure from every state in which the applicant has ever held a license.

R4-16-108. Application for Locum Tenens Registration

- A. An applicant for a locum tenens registration to practice medicine shall submit an application on a form provided by the Board that provides the information required by R4-16-107(A).
- B. In addition to the application, an applicant for a locum tenens registration to practice medicine shall submit the following:
 1. Certified copy of the applicant's medical degree diploma;
 2. Certified copies of internship, residency, or fellowship certificates;
 3. A statement completed by the sponsoring Arizona-licensed physician giving the reason for the request for issuance of the registration; and
 4. Certified copy of ECFMG certificate, if applicable.
- C. In addition to the requirements of subsections (A) and (B), an applicant for locum tenens registration shall have the following directly submitted to the Board:
 1. American Medical Association physician profile;
 2. Federation of State Medical Boards disciplinary search; and
 3. Verification of licensure from every state in which the applicant has ever held a license.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. REAL ESTATE DEPARTMENT

PREAMBLE

1. **Sections Affected**

R4-28-101	Amend
R4-28-103	Amend
Table 1	Amend
R4-28-301	Amend
R4-28-303	Amend
R4-28-402	Amend
R4-28-701	Amend
R4-28-803	Amend
R4-28-804	Amend
R4-28-A1205	Amend
R4-28-A1211	Amend
R4-28-B1203	Amend
R4-28-B1207	Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 32-2107(E), 41-1073

Implementing statutes: A.R.S. §§ 32-2135, 32-2181(A)(17), 32-2184, 32-2185.06, 32-2194.01(A)(13), 32-2195(H), 32-2195.03(C)(4), 32-2195.04, 32-2195.10, 32-2197.01(7) and (17), 32-2197.02, 32-2197.03, 32-2197.06, 32-2198.01(A)(21) and (A)(22), 32-2198.02, 41-1073(B)
3. **The effective date of the rules:**

May 2, 2000
4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notices of Rulemaking Docket Opening: 5 A.A.R. 2444, July 30, 1999 and 5 A.A.R. 3618, October 1, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 3328, October 1, 1999

Arizona Administrative Register
Notices of Final Rulemaking

Notice of Supplemental Rulemaking: 6 A.A.R. 542, February 4, 2000

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: John King, Deputy Commissioner
Address: Arizona Department of Real Estate
2910 N. 44th Street, Suite 100
Phoenix, Arizona 85018
Telephone: (602) 468-1414, ext. 135
Fax: (602) 468-0562

6. An explanation of the rule, including the agency's reasons for initiating the rule:

This rulemaking makes minor changes for understanding and clarity, corrects an omission to allow exemption applicants to respond to requests for additional information, adds timeframes for branch offices, provides flexibility for contract wording, and establishes requirements for distance learning courses.

Public comment received at 2 public hearings during the rulemaking process resulted in several significant changes being made to the proposed rules. A supplemental rulemaking was noticed in the *Register* to address these changes and to provide an additional public comment period.

SPECIFIC SECTION BY SECTION EXPLANATION OF THIS PROPOSAL

R4-28-101, Definitions. The term "distance learning" has been added to identify a specific method of instruction.

R4-28-103, Licensing Timeframes. This Section establishes the timeframe parameters for granting or denying a license. The proposed rulemaking added the phrase "unless the applicant requests an extension" in subsection (C). This wording did not provide either the Department or the stakeholder with verification of an extension. In a Supplemental Proposed Rulemaking published February 4, 2000, the Department changed the phrase to "unless an extension is granted by the Department pursuant to a written request."

Table 1, Timeframes. The last Department rulemaking did not allow an applicant applying for exemption a specific number of days to respond to a request for additional information. If the Department is going to determine when an exemption application is considered withdrawn, it is necessary to grant a period of time for an applicant to reply.

The timeframes for branch offices have been added.

R4-28-301, General License Requirements. This Section is being amended to eliminate the requirement that license certification questionnaires must be notarized or witnessed by Department personnel.

R4-28-303, License Renewal; Reinstatement; License Changes. Requesting a salesperson or broker to provide information concerning the "opening, closing, or relocation of a broker's trust account" on a Change Form, as required in subsection (E)(3)(i) is not correct. The request for this information has been moved to subsection (E)(2), where the salesperson or broker simply informs the Department in writing of the change.

The subsection cited in subsection (F) is incorrect and has been changed.

Subsection (F) deals with requirements of both the salesperson or associate broker. This responsibility was not followed through in subsections (F)(1)(c)(ii) and (F)(2)(c)(ii) when only the broker was required to submit a Certificate of Good Standing from the Arizona Corporation Commission. This oversight has been corrected.

R4-28-402, Continuing Education Requirements; Waiver; Distance Learning. This Section provides the applicant with a detailed description of the continuing education course requirements and establishes the criteria for approval of distance learning courses.

R4-28-701, Compensation Sharing; Disclosure. This Section requires that a real estate broker representing a party in a transaction must disclose to all parties in the transaction the identity of any broker receiving compensation.

The word "substantially" was deleted from R4-28-803, Contract Disclosures and R4-28-804, Rescission of Contract in the last rulemaking. This deletion allows businesses no variation in the contract language no matter how minor or insignificant. This was not the Department's intent and the word has been reinserted.

R4-28-A1205, Water Supply. A.R.S. § 32-2195(H) provides that certain disclosure requirements must be satisfied if a water availability report has been issued by the Department of Water Resources. If no report has been issued, then disclosure must be made. This change eliminates the implication that the water availability report must be obtained for all unsubdivided land applications.

R4-28-A1211, Assurances For Completion and Maintenance of Improvements. The list of assurances in this Section was never intended to be an exhaustive list of possible assurances. This list is only a sampling of the traditional assurances seen by the Department over time. New and creative methods of demonstrating adequate assurances will continuously evolve. This rulemaking allows the agency to be flexible.

R4-28-B1203, Material Change; Public Report Amendments. Subsections (C) and (D) have been reversed to make the Section easier to follow and understand.

Notices of Final Rulemaking

R4-28-B1207, Subsequent Owner. Subsection (E) deals with the new owner of a property, not the subsequent owner and has been changed accordingly. This Section makes clear to businesses that pending applications cannot be taken over by new owners of the land.

- 7. A reference to any study that the agency relies on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None

- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 9. The summary of the economic, small business, and consumer impact:**

A. *Estimated Costs and Benefits to the Arizona Department of Real Estate.*

No financial benefits are realized by the implementation of this rulemaking. Other than adding distance learning courses to the approval process, the Department does not anticipate that there will be any additional administrative functions.

During the past five years, the following licenses have been issued:

LICENSES	1995	1996	1997	1998	1999
Salesperson (Incl. Non Resident)					
New	4,000	4,056	3,939	4,063	4,680
Renewal	11,065	12,269	10,765	12,143	11,440
Broker (Incl. Non Resident)					
New	631	932	640	625	551
Renewal	6,115	5,762	4,843	4,850	5,123
Temporary Broker		1	3	4	5
Corporation (Calendar Year)					
New	225	217	321	275	236
Renewal	153	380	#	119	123
Limited Liability Company					
New	72	109	128	150	175
Renewal	4	21	#	13	17
Partnership					
New	14	7	11	7	11
Renewal	12	20	#	5	3
Branch Office					
New	149	164	13	201	190
Renewal	75	163	#	210	271
Certificate of Convenience					
Temporary Cemetery /Campground	62**	100**	68**	189**	176**
Salesperson					
School Approval	83	83	89	90	90
Course Approval (New/Revised)	504	510	302	248	235
Instructor Approval	228	115	138	146	136
Public Report Application	1,295***	770	637	760	777
Amended Public Report		513	360	521	555

* Combined entities ** Combined temporary licenses *** Combined application and amended reports

1997 entity renewal numbers are not available because of a design error in the Department's custom software.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Arizona Administrative Register
Notices of Final Rulemaking

Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

C. Businesses Directly Affected By the Rulemaking. (Salespersons, brokers, corporations, limited liability companies, partnerships, trusts, managers of real property, real estate schools, real estate teachers.)

This rulemaking provides stakeholders with greater flexibility and a minor economic impact when complying with the rules.

R4-28B402 provides an explanation of the continuing education requirements making it easier for stakeholders to understand what is meant by each category, and adds an additional method for gaining credit hours for continuing education.

D. Estimated Costs and Benefits to Private and Public Employment.

Private and public employment of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

E. Estimated Costs and Benefits to Consumers and the Public.

Consumers and the public are not directly affected by the implementation and enforcement of this proposed rulemaking.

F. Estimated Costs and Benefits to State Revenues.

State revenues are not directly affected by the implementation and enforcement of this proposed rulemaking.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

R4-28-103. The proposed rulemaking's addition of the phrase, "unless the applicant requests an extension" in subsection (C) provided the Department with wording that was consistent with the rest of the Section. This wording, however, did not provide either the Department or the stakeholder, with verification of an extension. The following change remedies that omission and was proposed in a subsequent supplemental rulemaking:

If the applicant fails to provide the information identified in the written request the Department shall consider the application withdrawn, unless an extension is granted by the Commissioner pursuant to a written request.

R4-28-402. As originally proposed, this Section required licensees to attend a minimum of 3 hours in the general course category. While a licensee may attend a general category real estate course, a class in the general category is not required for license renewal. This Section is amended to clarify that the 24 credit hours is required from only the first 5 categories listed.

R4-28-701. The Department planned to repeal this Section in the proposed rulemaking. It was believed that the public was adequately protected, since most residential transactions include disclosure of commissions in settlement statements, and principals will have signed an employment agreement if they are to compensate a broker. However, based on written comments and those comments received at the public hearings, the Department amended the rule to require disclosure of only the brokerage firm receiving compensation, and not every licensee.

This decision to amend rather than repeal was substantive and a supplemental rulemaking was published February 4, 2000. The Department agreed to change "principal" back to "the parties in the transaction" to be consistent with real estate statutes and rules. The term "commission" has been deleted as being redundant with the term "compensation."

R4-28-A1205. The proposed clarification to subsection (16) does not appear to be sufficient. This subsection has been changed to: "If the development is unsubdivided lands; and a water availability report ~~from the~~ has been issued by ADWR, a copy of the report."

R4-28-B1203. The Department received an informal comment requesting that a developer who applies to amend the public report (subsection (D)) should be required to provide the status of the date extension prescribed in subsection (C). The Department agrees and subsection (C) has been moved to subsection (D)(4).

At the request of G.R.R.C. staff, grammatical and clarification rule changes were made throughout the rule package.

11. A summary of the principal comments and the agency response to them:

The following comments were received during the public hearings in Phoenix and Tucson.

R4-28-402.

Comment: Bill Gray, Arizona School of Real Estate, commented that distance learning would be hard to control because: 1) students are not within the classroom boundaries; 2) It will not be certain who the student is that is actually taking the class. Another person could be taking the class for that student; 3) Not aware of the actual time spent taking the course; 4) Students could give test answers to another student who is taking the same distance learning course; 5) This could be opening a program to non-school affiliations. (Companies wanting to advertise their services.)

Arizona Administrative Register
Notices of Final Rulemaking

Mr. Gray suggested that the rule be amended to limit distance learning to classes in the general category so that distance learning can be tested before allowing the required categories of agency law, contract law, Commissioner's standards, real estate legal issues, and fair housing to be taken.

Response: Commissioner Holt explained that other states have been offering distance learning for some time. The Department has the benefit and experience of other states and community colleges. John Bechtold, Arizona Department of Real Estate, Director of Education and Licensing, commented that the Department will be 1 of 24 real estate agencies nation-wide that allow distance learning. The Department will benefit from the experiences of these other states and will establish strict guidelines for approval of each distance learning course.

John King, Deputy Commissioner, stated that students who are dishonest will find a way to cheat the system. It is important to keep up with the methods of learning.

Commissioner Holt said that the same problems can occur with the current educational system, such as impersonating another person to take a continuing class for that person. If a person is dishonest there are ways to get around a system; pitfalls exist even in the current continuing education system.

Comment: Stu Israel, Westford College of Real Estate, commented that 1 of the safeguards of the current system is requiring the students to sign in, in addition to the other documents needed to register for the course, and it would not be possible to check signatures of those taking a distance learning course on the Internet. However, in response to a query as to how many times the Department had checked student signatures, it has occurred only once in 20 years.

Comment: Jim Marrion, Professional Institute of Real Estate, explained that after completion of a course at his school, the students receive their certificates when their name is called at the end of the course. Mr. Marrion stated that a person could easily register and complete a distance learning course for another person on the Internet. Mr. Marrion explained that distance learning makes it too tempting and easy to cheat.

Response: Mr. King explained that the Department spot-checks renewal applications and has yet to find 1 licensee who has been dishonest about the continuing education hours.

Response: Mr. Bechtold advised that since August 1997, each month approximately 50-75 continuing education applications have been audited.

Comment: There is no way to predict or determine how much time the licensee actually spends covering the class material. It may not take 3 hours to complete a 3-credit hour course.

Response: An estimate of the amount of time it will take to complete the various modules and understand the course objectives is the number of credit hours that will be approved. It is acceptable if it takes some students less time (or more time) to master the concept than others (the student will still receive the approved credit hours for course completion).

Comment: People will merely watch the instructor and won't learn the material.

Response: The potential for learning is the same whether the course is offered "live" or through some distance learning delivery method. Different people learn in different ways. Some will learn more through non-traditional delivery methods than sitting in a classroom.

Comment: Lender-sponsored programs should be allowed to include advertising.

Response: The name of a sponsor or information source can appear on the course materials, however advertisement of products or services is not permitted during "approved courses" regardless of the method of course delivery.

Comment: Mr. Ed Ricketts commented that the word "including" is mentioned for contract law, Commissioner's standards, real estate legal issues and for fair housing, but is conspicuously absent in subsection (A)(1)(f). Mr. Ricketts suggested adding the word for consistency.

Response: The Department agreed and made the change.

R4-28-701.

Comment: Mr. Gray explained that the problem with this rule began last year when the word "licensee" was added. This was not necessary since the employing broker was already required to be named in the disclosure.

Comment: Tom Fannin, Arizona Association of Realtors, explained that it is almost impossible to disclose all of the parties that might participate in the commission. It is impractical for the Department to have a rule that is impossible to abide by, which is why Realtors want to eliminate this rule. Mr. Fannin said that more thought should be given to disclose only certain aspects of the commission.

Comment: The Department should leave in R4-28-701, but amend it so that only the employing broker (the brokerage firm) is identified as receiving compensation, not every licensee.

Response: The Commissioner believes that the "public", specifically principals in a real estate transaction B, are adequately protected and know the commission/compensation each is to pay under the principal's employment agreement. Based on all comments received, the Department will not repeal R4-28-701, but will amend the Section to

Arizona Administrative Register
Notices of Final Rulemaking

require a written disclosure to principals before close of escrow, of the name of each employing broker receiving commissions/compensation in the transaction.

Letters from the Arizona School of Real Estate, Scottsdale; Tucson Realty & Trust Co., Tucson; and ERA A.P. Brown Co., Realtors, Tucson were received during the formal comment period.

Bill Gray, Arizona School of Real Estate is opposed to the repeal of R4-28-701. Mr. Gray's letter and public hearing testimony acknowledges that *the real estate industry has always required full disclosure to all parties in a transaction. Licensees are constantly being taken to task for concealing information that the buyer or seller felt should have been disclosed. Not requiring the disclosure of real estate commissions flies right in the face of current trends and expectations. . . the present rule requires that "any licensee receiving compensation must be disclosed" . . . Currently federal regulations . . . require full disclosure of all charges in a real estate transaction . . . The rule should read that all compensation received or paid to the employing brokers in a real estate transaction be disclosed to any and all parties in the transaction, before the close of escrow.*

Comment: Mike Waling, associate broker, sales manager, Executive Vice President, Gallagher & Associates, book-keeper for 90+ agents and janitor, supports the repeal of this Section. Mr. Waling stated that the current rules would add an enormous amount of time for him to follow through.

Response: Commissioner Holt apprised Mr. Waling of the previous day's public hearing discussion of this Section and asked if he had any objection to disclosing employing brokers receiving compensation.

Comment: Mr. Waling said that he would not be opposed to the revised rule if there was a reasonable explanation for it from those in opposition.

Comment: Patricia Richardson, Tucson Association of Realtors, supports the repeal and submitted 2 letters of testimony from John D'Urso, designated broker, Tucson Realty & Trust, Co., Tucson, and Jack Marek, broker ERA A.P. Brown Co., Realtors, Tucson. Ms. Richardson explained that they believe the public is adequately protected by current practice in the industry. Ms. Richardson also said that if the final rule required a simple disclosure of the principal brokers in the transaction being paid compensation as a result of the transaction, she did not believe the industry would have any opposition.

Comment: David Garber, commercial real estate broker and developer, said that the Department has historically leaned in the direction of more disclosure not less, so the public is best served by additional or stronger disclosure provisions. Mr. Garber agrees with the comments from the Phoenix public hearing that advising the parties is a good idea and supports the Commissioner's interpretation of comments to disclose the broker offices that are involved in the transaction.

The following comments were received regarding the supplemental rulemaking:

R4-28-701.

Comment: Don Miner, Fennemore Craig, suggested *the term "principal" be removed because it is rarely used to describe persons or entities in a real estate transaction. . . for consistency's sake, for precedential value and for purposes of clarity in interpretation, the phrase "the parties in the transaction" should be retained.*

Response: The Department agreed and made the change.

Comment: Don Miner, Fennemore Craig, stated that sometimes *no escrow is used in a transaction and it is quite conceivable that a commission may be payable even though there is no closing of escrow. On the other hand, a transaction may be "completed" even if it does not close and even if there is no escrow involved.* Mr. Miner suggested that the current phrase "completion of the transaction" would have broader and more appropriate application.

Response: The Department disagrees. "Completion of the transaction" is a vague term and "close of escrow" should not cause confusion even though a small percentage of transactions do not have an escrow.

Comment: Mr. Miner stated that *the term "identity" would ordinarily require sufficient disclosure of information to positively identify an employing broker whereas the "name" is confusing.* Mr. Miner suggested that the term "identity" be deleted and substituted with "name."

Response: No change was made. The term "name" is used throughout the real estate statutes and rules.

Comment: Edwin Ricketts, Ricketts Real Estate & Consulting, stated that *disclosure should be made only to one's own principal, not to someone else's principal. This also eliminates the possibility of duplication of disclosure. The employing broker must only make disclosure if he will be paid and/or if he is going to pay someone else, viz., a co-broke or referral fee. No longer would a broker be mandated to disclose information he may not have. For instance, the listing broker may not know that the buyer's broker is obligated to pay a referral fee. The referring broker will not have any responsibility to disclose who is getting paid. He often will not know anyway, and why should he? He's not the handling broker and he has no agency relationship. Also, the referring broker may be out-of-town or out-of-state.*

Response: The Department disagrees. Each broker should disclose the name of each employing broker receiving compensation to all parties to the transaction for full disclosure.

Comment: Mr. Ricketts suggested that the term "commission" be deleted because it is redundant.

Response: The Department agreed and removed the term.

Comment: Dave Hollingsworth, President of the Arizona Association of Realtors (AAR), commented that AAR still believes that repeal is the best option of this Section. "The rule is unnecessary and serves no good public purpose."

Response: The Department disagrees. While the Department recommended repeal of this Section in the proposed rulemaking, industry response during the public comment period revealed that the Section, as clarified, should be retained in order to identify the employing broker receiving compensation.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. REAL ESTATE DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

Section

R4-28-101. Definitions

R4-28-103. Licensing Timeframes

Table 1. Timeframes

ARTICLE 3. LICENSURE

Section

R4-28-301. General License Requirements

R4-28-303. License Renewal; Reinstatement; License Changes

ARTICLE 4. EDUCATION

Section

R4-28-402. Continuing Education Requirements; Waiver; Distance Learning

ARTICLE 7. COMPENSATION

Section

R4-28-701. Compensation Sharing; Disclosure

ARTICLE 8. DOCUMENTS

Section

R4-28-803. Contract Disclosures

R4-28-804. Rescission of Contract

ARTICLE 12. DEVELOPMENTS

PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY, OR SPECIAL ORDER OF EXEMPTION

Section

R4-28-A1205. Water Supply

R4-28-A1211. Assurances For Completion and Maintenance of Improvements

PART B. GENERAL INFORMATION

Section

R4-28-B1203. Material Change; Public Report Amendments

R4-28-B1207. Subsequent Owner

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. REAL ESTATE DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

R4-28-101. Definitions

In addition to the definitions listed in A.R.S. § 32-2101 the following terms apply to this Chapter:

1. No Change
2. No Change
3. No Change
4. No Change
5. No Change
6. “Distance learning” means a course of instruction outside a traditional classroom situation consisting of interactive instructional material, such as computer-based or audio-visual, requiring completion in the course hours specified. A course that requires a student to read text, listen to audio tapes, or view video material without student participation, feedback, and remedial instruction is not a distance learning course.
- ~~6-7.~~ No Change
- ~~7-8.~~ No Change
- ~~8-9.~~ No Change
- ~~9-10.~~ No Change
- ~~10-11.~~ No Change

R4-28-103. Licensing Timeframes

- A. No Change
- B. No Change
- C. Substantive review. The substantive review timeframe established in Table 1 begins after the application is administratively complete.
 1. The Department may schedule an inspection.
 2. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review timeframe is suspended from the date the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request, the Department shall consider the application withdrawn unless an extension is granted by the Commissioner by a written request.
 3. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant’s right to seek a fair hearing, and the time period for appealing the denial.

~~E.D.~~ No Change

Table 1. Timeframes (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Review	Response to Additional Information	Overall Timeframe
Broker and Salesperson (Individual)	A.R.S. § 32-2122 A.A.C. R4-28-301	15	15	45	30	60
Renewal (without change)	A.A.C. R4-28-302	15	15	0	0	15
Modified/Amended	A.A.C. R4-28-303	15	15	45	30	60
Corp/LLC/Partnership/ PC/ PLC	A.R.S. § 32-2125	30	30	90	60	120
Renewal (without change)	A.A.C. R4-28-301	30	30	0	0	30
Modified/Amended	A.A.C. R4-28-303	30	30	90	60	120
Temporary Broker	A.R.S. § 32-2133	30	30	90	60	120
Temp Cemetery Salesperson	A.R.S. § 32-2134	30	30	90	60	120
Membership Camping Cert. of Convenience	A.R.S. § 32-2134.01 A.A.C. R4-28-305	30	30	90	60	120
<u>Branch Office</u>	<u>A.R.S. § 32-2127</u>	<u>15</u>	<u>15</u>	<u>45</u>	<u>30</u>	<u>60</u>

Arizona Administrative Register

Notices of Final Rulemaking

School Approval	A.R.S. § 32-2135(A) A.A.C. R4-28-404	10	15	20	15	30
Course Approval: New	A.R.S. § 32-2135 A.A.C. R4-28-404	10	15	20	15	30
Instructor Approval	A.R.S. § 32-2135 A.A.C. R4-28-404	10	15	20	15	30
ADVERTISING Membership Campground (only for lottery or drawing)	A.R.S. § 32-2198.10(D) A.R.S. § 32-2198.14 A.A.C. R4-28-503(D)	15	5	0	0	15
Subdivision (only for drawing or contest)	A.R.S. § 32-2183.01(I) A.A.C. R4-28-503(D)	15	5	0	0	15
Time-Share (only for drawing or contest)	A.R.S. § 32-2197.11(I) A.A.C. R4-28-503(D)	15	5	0	0	15
Time-Share (the offer of a premium)	A.R.S. § 32-2197.11(K) A.A.C. R4-28-503(D)	15	5	0	0	15
Development Application	A.R.S. § 32-2183(A) A.R.S. § 32-2195.03(A) A.R.S. § 32-2197.06 A.R.S. § 32-2198.02 A.A.C. R4-28-B1203	20	20	50	20	70
Amended Report	A.R.S. § 32-2184 A.R.S. § 32-2195.10 A.R.S. § 32-2197.03 A.R.S. § 32-2198.01(D) A.A.C. R4-28-B1203	10	10	10	10	20
Certificate of Authority	A.R.S. § 32-2194.03(A)	20	20	50	20	70
Amended Certificate	A.R.S. § 32-2194.10 A.A.C. R4-28-B1204	10	10	10	10	20
WAIVERS Pre-license	A.R.S. § 32-2124 A.A.C. R4-28-401	15	60	30	0	45
Continuing Education	A.R.S. § 32-2130 A.R.S. R4-28-402	5	10	7	0	12
EXEMPTIONS Subdivision	A.R.S. § 2181.01 A.A.C. R4-28-B1202	20	20	20	0 20	40
Unsubdivided Land	A.R.S. § 32-2195.01 A.A.C. R4-28-B1202	20	20	20	0 20	40
Time-Share	A.R.S. § 32-2197.13	20	20	20	0 20	40
Membership Camping	A.R.S. § 32-3198.03	20	20	20	0 20	40

ARTICLE 3. LICENSURE

R4-28-301. General License Requirements

- A.** An applicant for or holder of any Department-issued license, renewal, or amended license, including, if an entity, any officer, director, member, manager, partner, owner, trust beneficiary holding 10% or more beneficial interest, stockholder owning 10% or more stock, or other person exercising control of the entity, shall submit the following information:
1. A signed certification questionnaire ~~sworn before a notary public, or witnessed by department personnel,~~ disclosing any:
 - a. Conviction for a misdemeanor or felony, or deferral of a judgment or sentencing for a misdemeanor or felony;
 - b. Order, judgment, or adverse decision entered against the applicant involving fraud or dishonesty, or involving the conduct of any business or transaction in real estate, cemetery property, time-share intervals, membership camping contracts, or campgrounds;
 - c. Restriction, suspension, or revocation of a professional or occupational license, or registration currently or previously held by the applicant in any state, district, ~~and~~ or possession of the United States or under authority of any federal or state agency; any civil penalty imposed under the license, or any denial of a license; or
 - d. Order, judgment, or decree permanently or temporarily enjoining the applicant from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share

Arizona Administrative Register
Notices of Final Rulemaking

intervals, membership camping contracts, campgrounds, securities, or involving consumer fraud or the racketeering laws.

2. If any response to subsection (A)(1) is answered in the affirmative, the applicant shall provide all of the following written documentation for each ~~person who answered~~ applicant answering in the affirmative:
 - a. A certified copy of any police report and court record that pertains to each crime for which the applicant has been convicted or for which sentencing or judgment has been deferred. If the applicant is unable to provide documents for each crime, the applicant shall provide written documentation from the court or agency having jurisdiction, stating the reason the records are unavailable.
 - b. Three written references from individuals, 18 years or older and not related by blood or marriage to the applicant, who have known the applicant for at least 1 year before the date of receipt of the application;
 - c. A 10-year work history, reflecting the employer's name and address, supervisor's name and telephone number, and dates of employment, including any periods of unemployment;
 - d. A certified copy of any document, such as the findings of fact, conclusions of law, ~~and an order,~~ assessing a civil penalty or denying, suspending, restricting or revoking any professional or occupational license held or previously held by the applicant within the last 10 years;
 - e. A certified copy of any civil judgment awarded by a court of competent jurisdiction ~~in which against~~ the applicant was a party and which that included findings of fraud or dishonest dealings by the applicant;
 - f. A certified copy of any document of a payment against, or repayment by, the applicant as a judgment debtor by any recovery fund administered by any state or professional or occupational licensing board. If an Arizona real estate or subdivision recovery fund matter, a written disclosure of the file number, approximate date, and approximate amount of payment and current repayment status satisfies this requirement.
 - g. A certified copy of any temporary or permanent order of injunction entered against the applicant;
 - h. Any other documentation that the applicant believes supports the applicant's qualifications for licensure.
3. A full set of fingerprints as prescribed in A.R.S. § 32-2108.01;
4. The appropriate license application and fee; and
5. Social security number, if the applicant is an individual.

- B.** No Change
C. No Change
D. No Change
E. No Change
F. No Change

R4-28-303. License Renewal; Reinstatement; License Changes

- A.** No Change
B. No Change
C. No Change
D. No Change
E. License Changes. A salesperson or broker shall notify the Commissioner of the following information and changes:
1. In writing or on a Change Form, whichever is appropriate:
 - a. The type of change being made;
 - b. The legal name, address, and telephone number of the salesperson or broker;
 - c. The prior name of the person, if changing name;
 - d. The prior address of the main or branch office, if changing address;
 - e. The salesperson's or broker's license number, expiration month, and year; and
 - f. The date of the application and signature of the salesperson or broker.
 2. In writing, within 10 days of the change:
 - a. Personal name, including proof of the change, ~~or;~~
 - b. Personal address;
 - c. Opening, closing, or relocation of a broker's trust account;
 - d. A branch office closing; or
 - e. Disclosure of certification information.
 3. On a Change Form, within 10 days of the change:
 - a. Active to inactive status;
 - i. The legal name and fictitious name, if any, of the severing broker; and
 - ii. The date and signature of the severing broker.
 - b. The employing broker's business address;
 - c. The business mailing address, if different than the business address;
 - d. A transfer between employer's offices by a salesperson or associate broker;
 - e. The appointment of temporary broker due to a designated broker's death or incapacity; or
 - f. ~~A branch office closing;~~

- ~~g-f. Branch office managers;~~
 - ~~h. Disclosure of certification information; or~~
 - ~~i. Opening, closing, or relocation of a broker's trust account.~~
 - 4. On a Change Form, and obtain approval from the Commissioner before conducting business. The existing license remains in effect until the application has been approved or denied.
 - a. The broker's business name;
 - b. The employing broker, including;
 - i. The legal name and fictitious name, if any, of the severing and hiring brokers; and
 - ii. The date and signatures of the severing and hiring brokers.
 - c. Inactive to active status;
 - i. The legal name of the hiring broker; and
 - ii. The date and signature of the hiring broker.
 - d. Designated broker by an entity;
 - e. Adopting, changing, or relinquishing professional corporation or professional limited liability company license status;
 - f. Membership of a professional corporation or professional limited liability company, or the license status of a member;
 - g. Broker change of status to or from associate broker;
 - h. Designated broker or entity change from resident to non-resident broker's license; or
 - i. Designated broker or entity change from non-resident to resident broker's license.
 - 5. Within 30 days of any change in structure of the licensed entity, the name of any:
 - a. Director, officer, or person holding, or controlling 10% or more of the shares, if a corporation;
 - b. Partner if a partnership; or
 - c. Member or manager if a limited liability company.
 - 6. ~~If in making a license change the a~~ previously issued license is not returned when making a license change, the salesperson or broker or the designated broker, if applicable, shall submit a written statement explaining why ~~it~~ the previous license is not being returned.
- F. In addition to the information required in subsection (E)(1), a salesperson or associate broker shall submit the following information when the change is in a:
- 1. Professional corporation.
 - a. The name of the professional corporation which includes the full or last name of each officer, director, and shareholder of the professional corporation as it appears in the Articles of Incorporation;
 - b. The name and business address of each officer, director, and shareholder in the corporation and a written statement that each holds a current and active real estate license; and
 - c. A copy of the Articles of Incorporation stamped "Received and Filed" by the Arizona Corporation Commission;
 - i. The Articles of Incorporation shall state that the corporation's sole purpose is to provide professional real estate, cemetery, ~~and~~ or membership camping services, or real estate, cemetery, and membership camping services.
 - ii. If more than 1 year has elapsed between the date the Articles of Incorporation were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a professional corporation, the Department shall require the salesperson or associate broker to submit a Certificate of Good Standing from the Arizona Corporation Commission.
 - 2. Professional limited liability company.
 - a. The name of the professional limited liability company which includes the full or last name of each member of the professional limited liability company as it appears in the Articles of Organization;
 - b. The name and address of each member and manager in the limited liability company and a written statement that each holds a current and active real estate license;
 - c. A copy of the Articles of Organization stamped "Received and Filed" by the Arizona Corporation Commission;
 - i. The Articles of Organization shall state that the company's sole purpose is to provide professional real estate, cemetery, ~~and~~ or membership camping services, or real estate, cemetery, and membership camping services.
 - ii. If more than 1 year has elapsed between the date the Articles of Organization were stamped "Filed" by the Arizona Corporation Commission and the date of the application for a license as a limited liability company, the Department shall require the salesperson or associate broker to submit a Certificate of Good Standing from the Arizona Corporation Commission.
 - d. A copy of the operating agreement, as amended.
- G. No Change

ARTICLE 4. EDUCATION

R4-28-402. Continuing Education Requirements; Waiver; Distance Learning

A. Continuing education requirements.

1. Any individual applying for real estate license renewal shall complete 24 credit hours in the following categories from a real estate school that meets the requirements in R4-28-404, of which a minimum of 3 hours are completed in each of the ~~following~~ first 5 categories:
 - a. Agency law; The majority of class material concerns agency relationships and disclosure;
 - b. Contract law; The majority of class material concerns the contract formation and implementation, or the results of contract use, including:
 - i. Various contract forms and clauses, fundamentals, updates, options, offers, counter offers, first right of refusal, and exchanges;
 - ii. Contract writing;
 - iii. Required disclosures, problem-solving, and law and rule requirements;
 - iv. Recent court decisions and case law studies;
 - v. Breach of contract issues;
 - vi. Legal, ethical and agency considerations, procedures, and disclosures;
 - vii. Accommodating current financing procedures, requirements, and options.
 - c. Commissioner's standards; The majority of class material relates to license laws, including:
 - i. Article 26 of the Arizona Constitution;
 - ii. A.R.S. Title 32, Chapter 20, and A.A.C. Title 4, Chapter 28, which includes trust accounts, recordkeeping, license requirements, exemptions to licensure, commission payments, recovery fund provisions, development requirements, processes for public reports for and sale of subdivided and unsubdivided land, membership campgrounds and time-shares, cemetery regulations, and grounds for disciplinary action and hearings.
 - iii. A.R.S. Title 44, Chapter 10, Article 3.1, Trade Names and Business Practices.
 - d. Real estate legal issues; ~~and~~ The majority of class material concerns existing real estate law, including:
 - i. Sources of real estate law (constitutions, statutes, zoning, common), and the legal system;
 - ii. Land and its elements (air, mineral rights, real and personal property);
 - iii. Land, title, and interests in land, homestead, encumbrances, and the Landlord and Tenant Act;
 - iv. Easements, fixtures, land descriptions, ownership, deeds, and building restrictions;
 - v. Escrow procedures, financing documents, and lending laws and regulations, including Regulation Z;
 - vi. Wills and estates, taxes, bankruptcy law, securities laws, title insurance, and appraisal law;
 - vii. Case law studies, real estate fraud, disclosure law, interstate and international real estate;
 - viii. Commission issues and forms of business ownership;
 - ix. Homeowners Association regulations;
 - x. Real Estate Settlement Procedures Act (RESPA); and
 - xi. Environmental issues.
 - e. Fair housing. The majority of class material concerns equal opportunities in housing, including:
 - i. Americans with Disabilities Act, ADA architectural designs (construction and development), and pertinent court cases;
 - ii. Arizona and federal fair housing laws, including advertising, marketing, information, and enforcement;
 - iii. Housing developments, deed restrictions, affordable housing, elder housing, zoning, local ordinances, and disclosures;
 - iv. Commercial and residential concerns; and
 - v. Administrative procedures and business practices.
 - f. General. The majority of class material concerns real estate, but does not fall within any of the classifications listed in subsections (A)(1)(a) through (A)(1)(e), including:
 - i. Appraisal methodology;
 - ii. General finance, use of financial calculators, math classes, and managing cash flow;
 - iii. History of development in metropolitan areas; and
 - iv. Introduction to property management.
2. The Department may require ~~individuals~~ an individual applying for renewal to obtain credit hours ~~in specific legal issue areas~~ based upon significant current issues in the real estate community.
3. Continuing education credit may be granted for an unapproved course if the applicant demonstrates to the satisfaction of the Commissioner that the course meets the ~~course approval~~ requirements prescribed in R4-28-404.
4. The equivalent subject matter hours within a 90-hour prelicensure course, if taken since the last license renewal, may be substituted for the 24-hours of continuing education required in subsection (A)(1).
5. If any change in the continuing education course requirements falls within a renewal applicant's license period, the renewal applicant may fulfill the continuing education requirements by satisfying the requirements in effect at the beginning or the end of the license period.

Arizona Administrative Register
Notices of Final Rulemaking

B. Continuing education waiver.

1. Pursuant to A.R.S. § 32-2130, the Commissioner may waive all or a portion of the continuing education requirement when a salesperson or broker submits a written request to the Commissioner and shows good cause for the waiver; such as when: For example:
 - a. A person employed by the state or political subdivision establishes to the satisfaction of the Commissioner that the person's employment during the prior license period involved real estate-related matters;
 - b. Any officer or employee of the state whose license is on an inactive status due to a possible conflict of interest or other employment requirement;
 - e. ~~Any other extraordinary circumstance exists or is demonstrated;~~
 - ~~d-c.~~ A substitution for education is demonstrated;
 - e-d. An approved real estate instructor requests a waiver for a course the instructor has taught;
 - e. Any other extraordinary circumstance exists or is demonstrated.
2. If the Commissioner grants a salesperson or broker additional time to complete the continuing education hours under a conditional waiver, the salesperson or broker shall complete the continuing education hours within the timeframe prescribed in the waiver, unless additional time is granted.

C. A person shall not receive credit for more than 9 hours of continuing education classes per day.

D. Distance learning.

1. The Department shall approve a distance learning course before credit is issued.
2. Only a school holding a Certificate of Approval shall offer a distance learning course.
3. A distance learning course shall contain the following:
 - a. Individual modules of instruction for delivery on a computer or other interactive program;
 - b. At least 1 learning objective for each module of instruction. The learning objective shall ensure that if all the objectives are met, the entire content of the course is understood;
 - c. A structured learning method to enable the student to attain each learning objective;
 - d. A diagnostic assessment of the student's performance during each module of instruction;
 - i. The assessment shall measure what the student learned throughout the module of instruction, and
 - ii. Assess the comprehension of each concept covered in the module.
 - e. Remediation.
 - i. Repetition of a module if a student is deficient in a diagnostic assessment;
 - ii. Continuous repetition of the module until the student understands the content material.
3. An approved instructor or the school coordinator or director shall teach and grade distance learning courses. The instructor, school coordinator, or director shall:
 - a. Provide the student with assistance, if required;
 - b. Obtain a signed certification statement from the student indicating that the student has completed each assignment of instruction; and
 - c. Certify the student as completing a distance learning course only if the student:
 - i. Completes all required instructional modules.
 - ii. Attends any required hours of live instruction or testing, or both, for a given course, and
 - iii. Passes a final examination.
4. If the distance learning course is computer-based, the school shall file a plan with the Department describing how it will deal with hardware and software failure.

ARTICLE 7. COMPENSATION

R4-28-701. Compensation Sharing; Disclosure

A real estate broker ~~representing a party in a transaction~~ shall disclose to all the parties in the transaction, in writing before ~~completion of the transaction~~ close of escrow, the identity of any licensee the name of each employing broker receiving compensation ~~from the transaction.~~

ARTICLE 8. DOCUMENTS

R4-28-803. Contract Disclosures

- A.** Any agreement or contract for the sale or lease of a property interest in a development that requires a public report shall contain substantially the following language in ~~large or bold print~~ or print larger than the other print used in the document above the signature portion of the document:

THE PURCHASER SHALL BE GIVEN A COPY OF THE PUBLIC REPORT BEFORE SIGNING THIS DOCUMENT.

- B.** No Change
C. No Change
D. No Change

Arizona Administrative Register
Notices of Final Rulemaking

R4-28-804. Rescission of Contract

- A. Any agreement or contract for the purchase or lease of an unimproved, subdivided lot, or any unsubdivided land, shall contain substantially the following language in ~~large or bold print or print larger than the other print used in the document~~ above the signature portion of the document:

The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind, and to the return of any money or other consideration by sending or delivering a written notice of rescission to the seller or lessor by midnight of the 7th calendar day following the day the purchaser or lessee executed the agreement. If the purchaser or lessee does not inspect the lot or parcel before the execution of the agreement, the purchaser or lessee shall have six months to inspect the lot or parcel, and at the time of inspection shall have the right to unilaterally rescind the agreement.

- B. Any agreement or contract for the purchase or lease of a time-share interval shall contain substantially the following language in ~~large or bold print or print larger than the other print used in the document~~ above the signature portion of the document:

The purchaser or lessee has the legal right to rescind (cancel) this agreement without cause or reason of any kind by sending or delivering a written notice of rescission to the seller or lessor by midnight of the 7th calendar day following the day the purchaser or lessee executed the agreement.

- C. No Change

ARTICLE 12. DEVELOPMENTS

**PART A. APPLICATION FOR PUBLIC REPORT, CERTIFICATE OF AUTHORITY,
OR SPECIAL ORDER OF EXEMPTION**

R4-28-A1205. Water Supply

~~The~~ An applicant shall include information about any water supply to the development, including:

1. ~~Whether the water supply will be provided by~~ The type of water provider such as a municipal system, improvement district, public utility, private water company, co-operative, irrigation district, private well, water hauler, or other source;
2. The name, address, and telephone number of the water provider;
3. The compliance status of the water provider with ~~the~~ federal and state environmental laws, as of the date of the application. If in noncompliance, provide an explanation;
4. The location of the ~~present water utility or water utility~~ water lines closest to the development;
5. The name of the person responsible for extending the water ~~utility lines~~ water lines to the lot lines;
6. The estimated completion date for extending the ~~utility~~ water lines to the lot lines ~~and how the utility will be completed;~~
7. The estimated cost a lot purchaser will be required to pay for completion of ~~the utility~~ water lines to the purchaser's lot line;
8. ~~If offering an unimproved lot, the~~ The estimated cost a lot purchaser will pay for completion of ~~the utility~~ water lines from the lot line to ~~the~~ a dwelling;
9. ~~Upon completion of the utility, other~~ Other costs or requirements ~~that must be addressed~~ before the lot purchaser receives water service, including the current service charges, hookup fees, turn-on fees, meter fees, and development fees;
10. The name of the person responsible for maintenance of the water lines within the development, other than from lot line to dwelling;
11. The name of the person who is or will be responsible for maintenance of the water lines outside the development;
12. If a private well will be used, a description of the requirements and costs involved to install an operational domestic water system;
13. If the source of water is a private well and domestic water cannot be obtained from ~~the~~ a private well, ~~will~~ whether the purchaser will be offered a refund of the purchase price and if so, an explanation of any condition or restriction involving the refund;
14. The name and location of the ~~supplier~~ water provider if ~~water for domestic water use~~ water will be transported or hauled ~~to individual lots by the lot~~ by the lot purchaser. A cost estimate computed on a monthly basis for a 4-member family, including the cost of water, cistern, and other holding tanks, pumps, or any other costs necessary to install an operational water system;
15. ~~If~~ A water adequacy report from ADWR if the development is a subdivision or part of a subdivision located outside of a groundwater active management area, ~~a water adequacy report from ADWR;~~
16. ~~If the development is unsubdivided lands, a water availability report from the ADWR.~~ A water availability report from ADWR if the development is unsubdivided land. The A copy of the report or a brief summary of the report, approved by the Department, shall be displayed in all promotional material and contracts for sale; and
17. If a water provider is a public service corporation, whether a Certificate of Convenience and Necessity from the Arizona Corporation Commission has been issued and, if not, an explanation of why a Certificate has not been issued.

Arizona Administrative Register
Notices of Final Rulemaking

R4-28-A1211. Assurances For Completion and Maintenance of Improvements

A. No Change

B. ~~The~~ An applicant shall provide 1 or more of the following assurances for completion:

1. A surety or completion bond from an insurance company licensed ~~to do business~~ in Arizona with a rating of good or higher from a rating agency and a copy of the rating. The bond shall specify which improvements are included and shall:
 - a. Be stipulated by and payable to a 3rd party who is not the developer;
 - b. Be accepted and signed by all parties;
 - c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date; ~~and clearly state~~
 - d. State when and how the 3rd party may draw on the funds;
 - ~~d-e.~~ Be in an amount 10% greater than the estimated amount to complete all improvements; and
 - e-f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements.
2. An irrevocable letter of credit from a financial institution licensed to do business in Arizona. The irrevocable letter of credit shall specify which improvements are included and shall:
 - a. Be stipulated by and payable to a 3rd party who is not the developer;
 - b. Be accepted and signed by all parties;
 - c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date; ~~and clearly state~~
 - d. State when and how the 3rd party may draw on the funds;
 - ~~d-e.~~ Be in an amount 10% greater than the estimated amount to complete all improvements;
 - e-f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements;
 - f-g. State that repayment is the responsibility of the developer and not of the 3rd party; and
 - ~~g-h.~~ State that the irrevocable letter of credit is non-cancelable.
3. A loan commitment and agreement from a lender licensed ~~to do business~~ in Arizona. The loan commitment and agreement shall specify which improvements are included and shall:
 - a. Be stipulated by and payable to a 3rd party who is not the developer;
 - b. Be accepted and signed by all parties;
 - c. Include an expiration date not less than 90 days beyond the last improvement estimated completion date; ~~and clearly state~~
 - d. State when and how the 3rd party may draw on the funds;
 - ~~d-e.~~ Be in an amount 10% greater than the estimated amount to complete all improvements;
 - e-f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
 - f-g. State that repayment is the responsibility of the developer and not of the 3rd party even if the 3rd party draws on the funds.
4. A trust or escrow account with a financial institution or escrow company licensed ~~to do business~~ in Arizona. The trust or escrow account shall specify which improvements are included and shall:
 - a. Be stipulated by and payable to a 3rd party who is not the developer;
 - b. Be accepted and signed by all parties;
 - c. Include an expiration date not less than 90 Days beyond the last improvement estimated completion date; ~~and shall clearly state~~
 - d. State when and how the 3rd party may draw on the funds;
 - ~~d-e.~~ Be in an amount 10% greater than the estimated amount to complete all improvements;
 - e-f. Include a registered engineer's, architect's, or contractor's cost estimate to complete the improvements; and
 - f-g. Directly pay for the improvements completed or release funds to the developer upon written verification from a registered engineer that the improvements have been completed in accordance with the plan.
5. ~~Subdivisions. The municipal or county government shall prohibit occupancy and the subdivider shall not close escrow on lots sold in the subdivision until all proposed or promised subdivision improvements are complete.~~
 - a. ~~The subdivider shall submit an agreement or copy of the ordinance from the city or county prohibiting occupancy until all proposed or promised subdivision improvements are complete.~~
 - b. ~~The subdivider shall submit a written statement that no escrow shall close on any lot until all subdivision improvements are complete.~~
 - c. ~~The subdivider shall submit a copy of the subdivider's purchase contract containing in large or bold print the condition that escrow shall not close until the city or county issues its occupancy clearance and all subdivision improvements are complete.~~
 - d. ~~Escrow may close on a lot before completion of all improvements if the lot is within a phase of the subdivision where all improvements are complete and can be used and maintained separately from the improvements required for the entire subdivision.~~

Notices of Final Rulemaking

- e. ~~If improvements are completed in phases, the subdivider shall submit complete details of the phasing program, including approval of the phasing by the city or county and the completion schedule for the phases.~~
 - f. ~~Any improvement offered or promised to purchasers that is scheduled for completion in a later phase shall have its completion assured by an alternative method of assurance listed in this Section.~~
 - g. ~~If the subdivider's sales include unimproved (vacant) lots, the subdivider shall deposit all earnest money into a neutral escrow depository until escrow closes.~~
 - 6.5. City and county trust agreement. ~~Any~~ A municipal or county government may enter into an assurance agreement with a trustee to hold a lot conveyance until improvements are completed, ~~provided:~~
 - a. The trustee is an escrow company licensed ~~to do business~~ in Arizona, and
 - b. The agreement is recorded.
 - 7.6. Written escrow agreement. A developer may enter into a written escrow agreement with a title insurance company or escrow company to escrow all funds and ~~not prohibit~~ close ~~any~~ of escrow until all improvements are complete. The agreement shall contain the following stipulations:
 - a. The funds ~~shall~~ are not be released nor the purchaser's deed or other relevant documents recorded until ~~certification is given the developer's architect or engineer certifies to the Department and the escrow agent by the developer's architect or engineer that the project is complete, ready for occupancy, and in compliance with all city and county requirements.~~
 - b. If the completion date is not met:
 - i. The developer ~~shall~~ will give purchasers notice that completion dates were not met and an updated completion schedule; ~~;~~
 - ii. A purchaser may, within 30 days of receiving the notice specified in subsection (B)(6)(b)(i), cancel and receive a full refund by sending written notice to the escrow agent; ~~;~~
 - iii. The public report is invalid and all sales are suspended; ~~;~~ and
 - iv. The Department considers the public report valid if improvements are completed at a later date and the public report is complete and accurate.
 - 7. Subdivision assurances. The municipal or county government shall prohibit occupancy and an subdivider shall not close escrow on lots sold in a subdivision until all proposed or promised subdivision improvements are complete.
 - a. The subdivider shall submit an agreement or copy of the ordinance from the city or county prohibiting occupancy until all proposed or promised subdivision improvements are complete.
 - b. If improvements are completed in phases, the subdivider shall submit complete details of the phasing program, including approval of the phasing by the city or county and the completion schedule for the phases to the Department.
 - c. The subdivider shall submit a written statement that no escrow will close on any lot until all subdivision improvements are complete. If a lot is within a phase of the subdivision where all improvements are complete and can be used and maintained separately from the improvements required for the entire subdivision the escrow may be closed.
 - d. The subdivider shall submit a copy of the subdivider's purchase contract containing in large or bold print the condition that escrow will not close until the city or county issues its occupancy clearance and all subdivision improvements are complete.
 - e. Any improvement offered or promised to a purchaser that is scheduled for completion in a later phase of completion shall have its completion assured by an alternative method of assurance listed in this Section.
 - f. If the subdivider's sales include unimproved (vacant) lots, the subdivider shall deposit all earnest money into a neutral escrow depository until escrow closes.
 - 8. Any other assurance satisfactory to the Department that is not listed in subsections (B)(1) through (B)(7).
- C. No Change

PART B. GENERAL INFORMATION

R4-28-B1203. Material Change; Public Report Amendments

- A. No Change
- B. ~~Pursuant to the~~ According to material changes reported in subsection (A), the Department may require the developer to amend the public report.
- C. ~~A developer may apply to amend the public report by submitting payment of the applicable amendment fee and the following information:~~
 - 1. ~~The name and registration number of the development;~~
 - 2. ~~The name and signature of the developer;~~
 - 3. ~~A list of the changes to the development and sales offering or in the information previously provided to the Department;~~
 - 4. ~~Status of sales as prescribed in subsections (D) and (E); and~~

Notices of Final Rulemaking

5. ~~A purchase contract addendum, to be signed and dated by both seller and purchaser, acknowledging that the sale is conditioned upon issuance of the amended public report and purchaser's receipt and acceptance of the amended public report.~~

D.C. Completion Date Extension.

1. A developer may apply to the Department for an amendment to a public report to extend the completion date of any improvement by providing an affidavit from the developer attesting that each purchaser, owner, and the city or county officials responsible for improvements were provided written notice of the completion status of the improvement, including a list of all people who were provided notice.
2. The Department may deny the application to extend the completion date beyond the first extension if a purchaser, owner, or city or county official opposes issuance of an amended public report to extend a completion date.
3. If an extension is denied, the developer shall provide the Department with a written agreement to ~~voluntarily~~ suspend sales until the improvement is complete or the Department may issue a summary suspension order as provided in A.R.S. § 32-2157(B).

D. To amend a public report, a developer shall submit payment of the applicable amendment fee and the following information:

1. The name and registration number of the development;
2. The name and signature of the developer;
3. A list of the changes to the development and sales offering or in the information previously provided to the Department;
4. Status of sales as prescribed in subsections (C) and (E); and
5. A purchase contract addendum, to be signed and dated by both seller and purchaser, acknowledging that the sale is conditioned upon issuance of the amended public report and purchaser's receipt and acceptance of the amended public report.

E. Suspension of sales.

1. If necessary for the protection of purchasers, the Department may suspend approval to sell or lease pending amendment of the report.
2. In lieu of issuing a suspension order ~~pursuant to~~ under A.R.S. § 32-2157, the Department may accept a developer's written agreement to ~~voluntarily~~ suspend sales until the amended public report has been issued by the Department.

F. No Change

G. No Change

H. No Change

R4-28-B1207. Subsequent Owner

A. No Change

B. No Change

C. No Change

D. No Change

- E.** A developer who is a ~~subsequent new~~ owner of property that is the subject of a pending application for a public report shall not replace or be substituted for the applicant of that the pending application until the Department approves or denies the pending application. ~~Once the pending application is acted upon, the subsequent owner may file an application for a public report.~~

NOTICE OF FINAL RULEMAKING

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

CHAPTER 4. CORPORATION COMMISSION – SECURITIES

PREAMBLE

1. Sections Affected

R14-4-116
R14-4-116
R14-4-118
R14-4-119

Rulemaking Action

Repeal
New Section
Amend
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 44-1821

Arizona Administrative Register
Notices of Final Rulemaking

Implementing statutes: A.R.S. §§ 44-1891 and 44-1902

Constitutional authority: Arizona Constitution Article XV § 6

3. The effective dates of the rules (if different from the date the rules are filed with the Office):

May 3, 2000

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 5 A.A.R. 2179, July 9, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 2983, September 3, 1999

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Kurt Merritt, Assistant General Counsel

Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, AZ 85007-2996

Phone: (602) 542-4242

Fax: (602) 594-7471

6. An explanation of the rules, including the agency's reasons for initiating the rules:

Current Section R14-4-116 is repealed as unnecessary and redundant given Arizona public record laws.

Proposed Section R14-4-116 formally identifies and incorporates by reference certain policy statements issued by the North American Securities Administrators Association ("NASAA") regarding the registration of securities. The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") requires issuers registering securities to follow these policy statements. The new R14-4-116 clarifies the Division's policy statement dated November 27, 1984, published in the CCH Blue Sky Reporter, that states that Arizona subscribes to statements of policy adopted by NASAA relating to the registration of securities, unless in conflict with a state statute or regulation.

Section R14-4-118 requires issuers registering securities in Arizona to include specific legends on the front cover page of prospectuses. The proposed amendments remove the precise wording and font requirements of the Section, and instead require concise and conspicuous disclosures without dictating form. The amendments are proposed to harmonize with federal law "plain English" disclosure rules for prospectuses.

New Section R14-4-119 codifies requirements for issuers applying to register preferred stock. Section R14-4-119 is based on a NASAA policy statement that the Division currently utilizes.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

The proposed rule will not diminish a previous grant of authority of a political subdivision of this state.

8. The summary of the economic, small business, and consumer impact:

Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

9. A description of the changes between the proposed rules, including supplemental notices, and the final rules (if applicable):

None

10. A summary of the principal comments and the agency response to them:

The Commission did not receive any comment letters.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

All the following are policy statements issued by NASAA and published in CCH Blue Sky Reporter. All references to the policy statements are located in R14-4-116(A).

- Statement of policy regarding loans and other material affiliated transactions, amended November 18, 1997.
- Registration of asset-backed securities, adopted October 25, 1995.
- NASAA mortgage program guidelines, adopted September 10, 1996.
- Registration of commodity pool programs, adopted on September 21, 1983, effective January 1, 1984; amended and adopted August 30, 1990.

- Equipment programs, adopted on November 20, 1986, effective January 1, 1987, amended April 22, 1988, and October 24, 1991.
- Registration of oil and gas programs, adopted on September 22, 1976, amended October 12, 1977, October 31, 1979, April 23, 1983, July 1, 1984, September 3, 1987, September 14, 1989, and October 24, 1991.
- Statement of policy regarding real estate investment trusts, revised and adopted on September 29, 1993.
- Real estate programs, last revised September 29, 1993.
- Statement of policy regarding unequal voting rights, adopted and effective October 24, 1991.
- Omnibus guidelines, adopted on March 29, 1992.

13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency rule and the adoption of the final rule.

Not applicable

14. The full text of the rule follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section

~~R14-4-116. Inspection of registration information~~

R14-4-116. NASAA Statements of Policy

~~R14-4-118. Statement Statements required Required in prospectuses Prospectus~~

R14-4-119. Additional Registration Requirements for Preferred Stock

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

~~**R14-4-116. Inspection of registration information**~~

~~All prospectuses for registration are available for public inspection during business hours at the principal offices of the Arizona Corporation Commission, Phoenix, Arizona. Such prospectuses which are available for public inspection are those which have an effective registration date.~~

R14-4-116. NASAA Statements of Policy

A. Securities or transactions that fall within one or more of the following North American Securities Administrators Association statements of policy shall comply with the requirements of those statements of policy to qualify for registration or renewal under A.R.S. Title 44, Chapter 12, Article 7. This Section shall not apply to the registration of securities under A.R.S. § 44-1901.

1. Statement of policy regarding loans and other material affiliated transactions, amended November 18, 1997.
2. Registration of asset-backed securities, adopted October 25, 1995.
3. NASAA mortgage program guidelines, adopted September 10, 1996.
4. Registration of commodity pool programs, adopted on September 21, 1983, effective January 1, 1984; amended and adopted August 30, 1990.
5. Equipment programs, adopted on November 20, 1986, effective January 1, 1987, amended April 22, 1988, and October 24, 1991.
6. Registration of oil and gas programs, adopted on September 22, 1976, amended October 12, 1977, October 31, 1979, April 23, 1983, July 1, 1984, September 3, 1987, September 14, 1989, and October 24, 1991.
7. Statement of policy regarding real estate investment trusts, revised and adopted on September 29, 1993.
8. Real estate programs, last revised September 29, 1993.
9. Statement of policy regarding unequal voting rights, adopted and effective October 24, 1991.
10. Omnibus Guidelines, adopted on March 29, 1992.

B. The statements of policy listed in subsection (A) are incorporated by reference. The incorporated statements of policy do not contain later editions or amendments made after the effective date of this Section. The statements of policy are published in NASAA Reports by Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646. Copies are also available at the Office of the Secretary of State and the Commission.

~~**R14-4-118. Statement Statements required Required in prospectuses Prospectus**~~

A. This Section applies to securities subject to A.R.S. Title 44, Chapter 12, Articles 6 and 7.

Arizona Administrative Register
Notices of Final Rulemaking

B.A. There shall be set forth on the outside front cover page of every prospectus, printed in capital letters in bold face Roman type at least as large as 10 point modern type and at least two points leaded, whichever of the following statements shall be applicable:

~~"THESE SECURITIES ARE REGISTERED UNDER THE SECURITIES ACT OF ARIZONA, BUT THE FACT OF SUCH REGISTRATION IS NOT TO BE DEEMED A FINDING BY THE ARIZONA CORPORATION COMMISSION NOR THE DIRECTOR OF SECURITIES THAT THIS PROSPECTUS IS TRUE OR ACCURATE, NOR DOES SUCH REGISTRATION MEAN THAT THE COMMISSION OR THE DIRECTOR HAS PASSED UPON THE MERITS OF OR OTHERWISE APPROVED THE SECURITIES DESCRIBED HEREIN. THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION."~~

~~or~~

~~"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."~~

~~or~~

~~"THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION. THE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE."~~

The outside front cover page of every prospectus shall include, in a concise and conspicuous manner, a disclosure that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or determined if the prospectus is truthful or complete, and that any representation to the contrary is a criminal offense.

C.B. ~~There shall be set forth on the outside front cover page of every prospectus relating to securities. If any of the following apply to an issuer, the outside front cover page of the prospectus also shall include, in a concise and conspicuous manner, a disclosure regarding the speculative or high-risk nature of the securities:~~

- ~~1. The issuer of which has not been engaged for three years in the principal business in which it is then engaged, or in the business described in the prospectus for at least 3 years.~~
- ~~2. The issuer of which has not had a net profit net income in any of its last three 3 fiscal years. ,or~~
- ~~3. Which are of a value The value of the security offered is materially dependent on proposed or promised future promotion or development, the fulfillment or accomplishment of a future condition, promotion, or development instead of the issuer's rather than upon present tangible assets or conditions. ,or~~
- ~~4. In regard to a specific value of which the element of chance or hazard or speculative profit or possible loss equals or predominates over the element of reasonable certainty, safety and investment, or A significant portion of the issuer's assets are intangible assets that have not been assigned a value in an audited financial statement according to generally accepted accounting principles.~~
- ~~5. The issuer of which has included, or proposes to include in its assets as a material part thereof, speculative intangible assets, or has issued or proposes to issue a material part of its securities in payment for speculative intangible assets (the term "speculative intangible assets" as herein used to be interpreted as referring to patents, copyrights, formulae, good will, promotion, services rendered or other intangible assets, the book value of which has not been established to the satisfaction of the Commission or in consideration of the established value of which the contributors thereof have recently been or are to be issued securities at a price per unit substantially lower than the price per unit of similar securities offered by the prospectus), or The issuer intends to exchange a significant portion of the securities for intangible assets at a per-unit price that is substantially lower than the per-unit price offered in the prospectus.~~
- ~~6. Which are to be issued in furtherance or promotion of any enterprise or scheme for the sale, development or exploration of unimproved or undeveloped land or interests therein, unless the reasonable certainty, safety and investment quality thereof is established to the satisfaction of the Commission, or The securities are issued as part of any project or plan for the sale, development, or exploration of any interest in unimproved or undeveloped land or oil, gas, or other mineral right.~~
- ~~7. Which consists of any undivided interest or certificate of participation based on any undivided interest in oil royalties or oil leases where the value of such interests or certificates of participation materially depends on proposed or promised future development, a statement, printed in full face Roman type at least as large as 10 point modern type and at least two points leaded, reading as follows:
"THESE ARE SPECULATIVE SECURITIES".~~

D. Issuers may comply with subsection (C) by using either of the following disclosures or other clear, plain language.

1. "These are speculative securities. You should purchase these securities only if you can afford a complete loss of your investment."

2. "This investment involves a high degree of risk. You should purchase these securities only if you can afford a complete loss of your investment."

R14-4-119. Additional Registration Requirements for Preferred Stock

- A.** This Section applies to a person proposing to register preferred stock under A.R.S. Title 44, Chapter 12, Article 7. This Section shall not apply to the registration of securities under A.R.S. § 44-1901.
- B.** As used in this Section, the terms "promoter" and "unaffiliated institutional investor" shall have the same meaning indicated in Section R14-4-105. As used in this Section, the following terms have the meaning indicated.
1. "Adjusted net earnings" means, after subtracting interest and dividends charges, the issuer's net earnings adjusted on a pro forma basis to reflect all of the following:
 - a. The elimination of any required charges for debt, debt securities, or preferred stock that are to be redeemed or retired from the proceeds derived from the public offering of preferred stock.
 - b. The effect of any acquisitions or capital expenditures made by the issuer after its last fiscal year, or proposed or required to be made during the current fiscal year that materially affect the issuer's net earnings.
 - c. The effect of charges or dividends on debt, debt securities, or preferred stock issued after the issuer's last fiscal year.
 - d. The effect of any charges or dividends on debt, debt securities, or preferred stock issued during the issuer's last fiscal year, but outstanding for only a portion of the year. The effect of the charges or dividends shall be treated as if the debt, debt securities, or preferred stock had been outstanding for the entire last fiscal year.
 - e. The effect of any other material changes to an issuer's future net earnings.
 2. "Net earnings" means the issuer's after-tax earnings that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, determined according to generally accepted accounting principles.
- C.** The Commission may deny an application if the issuer's adjusted net earnings for the last fiscal year or its average adjusted net earnings for the last 3 fiscal years prior to the public offering were not sufficient to pay its fixed charges and preferred stock dividends, whether or not accrued, and to meet the redemption requirements, if applicable, of the preferred stock being offered.
- D.** As an alternative to subsection (C), the Commission may consider the issuer's "statement of cash flows," prepared in conformity with generally accepted accounting principles, if the statement demonstrates that the issuer has had positive "net cash provided by operating activities" for its last fiscal year. If the issuer will be redeeming or retiring debt securities using the proceeds from the public offering, the issuer shall make a pro forma adjustment for the elimination of the related interest charges, net of applicable income taxes. The Commission may require that the issuer submit a financial statement demonstrating an average positive "net cash provided by operating activities" for the last 3 fiscal years prior to the public offering. In either instance there must be sufficient cash to cover the preferred stock dividend whether or not declared.
- E.** Subsections (C) and (D) shall not apply to the registration of convertible preferred stock that is superior in right to payment of dividends, interest, and liquidation proceeds to any convertible debt and preferred stock that are legally or beneficially, directly or indirectly, owned by promoters. The issuer shall disclose the risks of failure to declare or pay dividends and the equity characteristics of the convertible preferred stock in the prospectus or offering document.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

PREAMBLE

- | | |
|---|--|
| <u>1. Sections affected</u>
R17-4-226
Appendix A
R17-4-226.01 | <u>Rulemaking Action:</u>
New Section
Repeal
New Section |
|---|--|
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 28-366
Implementing statute: A.R.S. § 28-4148
- 3. The effective date of the rules.**
May 3, 2000
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 4 A.A.R. 4353, December 28, 1998

Arizona Administrative Register
Notices of Final Rulemaking

Notice of Proposed Rulemaking: 6 A.A.R. 328, January 14, 2000

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Lynn S. Golder

Address: Arizona Department of Transportation
Motor Vehicle Division, Mail Drop 507M
3737 North 7th Street, Suite 160
Phoenix, Arizona 85014-5017

Telephone: (602) 712-7941

Fax: (602) 241-1624

E-mail: lgolder@dot.state.az.us

6. An explanation of the rule, including the agency's reasons for initiating the rule:

This rulemaking by the Arizona Department of Transportation, Motor Vehicle Division ("Division") repeals former R17-4-226 and Appendix A and establishes a replacement insurance company reporting requirements rule. The replacement rule provides for:

- Reporting or submission by an insurance company of a statement of inactivity each business week;
- Reporting by the information exchange, network job entry, or file transfer protocol types of electronic data interchange ("EDI"), also called computer-to-computer reporting, after July 31, 2001;
- Reporting by an insurance company and error return by the Division in the X12-811 formats, as adapted for Arizona, after July 31, 2001;
- A cartridge tape reporting exception or a manual reporting exception for qualifying small companies; and
- The Division's error return and noncompliance procedures.

In November 1998, the Division obtained the Secretary of State's permission to make a reporting format rule at R17-4-226.01. Therefore, this rulemaking establishes R17-4-226.01 that incorporates by reference the Arizona X12-811 formats, consisting of a reporting format and an error return format. R17-4-226.01 also includes the cartridge tape specifications, the cartridge tape reporting format, and the manual reporting requirements.

A.R.S. § 28-4148 requires weekly EDI reporting by insurance companies, regardless of size, after July 31, 1999. The Division satisfied the mandate of A.R.S. § 41-1035 by drafting R17-4-226(F) to reduce the impact of EDI reporting on small insurance companies. The Division achieved this impact reduction by the 2 specified exceptions to EDI X12-811 reporting.

The 2 specified exceptions in R17-4-226(F) accommodate the regulated community. Insurance companies not qualifying for an exception to EDI X12-811 reporting come under R17-4-226(C) and (D) and the main provision of subsection (E). Recognizing the limits of what is technologically possible, the final rules extend through July 31, 2001, the time for companies not qualifying for an exception under R17-4-226(F) to prepare for EDI X12-811 reporting. These companies will have had more than 3 years of preparation time after the effective date of the EDI language in A.R.S. § 28-4148.

Final rules R17-4-226 and R17-4-226.01 clearly separate EDI reporting and cartridge tape reporting. This separation is supported by the technical definition of EDI, stated in lay terms in the R17-4-226(A) definition of EDI, and the statutory history of A.R.S. § 28-4148.

Subsection (A) of the original insurance company reporting law, former A.R.S. § 28-1262(A), provided for insurance company reporting by magnetic tape "in a format pursuant to a schedule specified by the director" Subsection (A) was amended in 1993 to require insurance company reporting by "electronic media."

In 1997 the insurance company reporting statute was renumbered § 28-4148. Effective January 1, 1998, designation of the reporting method was relocated to subsection (C) of the statute, and "electronic data interchange" was designated. Subsection (C) states: "The insurer shall provide the information by electronic data interchange in a format pursuant to a schedule specified by and in a manner prescribed by the director."

The former insurance company reporting statute provided no definition of electronic media. Current A.R.S. § 28-4148(C) provides no definition of EDI. However, under the principles of statutory construction, the change from "electronic media" to "electronic data interchange" represented a change in meaning. While cartridge tape may be an electronic medium, it is not a form of EDI to information technology specialists.

Under the Division's broad A.R.S. § 28-4148(C) authority, R17-4-226(D) and the main provision of subsection (E) specify EDI X12-811 reporting after July 31, 2001, for companies not qualifying for an exception. The X12-811 format, developed by the American National Standards Institute, is both Y2K-compliant and the standard format for insurance information. The Division adapted the X12-811 format to Arizona EDI reporting requirements.

R17-4-226.01 incorporates by reference the Division's X12-811 format for insurance company reporting ["Arizona Adaptation of X12 (TS811) for Policy Receipt"] and the Division's X12-811 format for advising a company of reporting errors ["Arizona Adaptation of X12 (TS811) for Policy Error Return"]. The Arizona X12-811 reporting format will be optional through July 31, 2001, and mandatory after that date for companies not qualifying for an exception. The new reporting format rule also states the cartridge tape specifications and the Arizona cartridge tape reporting format. This format is exclusive to Arizona and is not Y2K-compliant. To ensure Y2K compliance when an insurance company reports in the Arizona cartridge tape reporting format, the Division must convert 6-digit dates to 8-digit dates. Finally, R17-4-226.01 states the information required in a manual report.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule, and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

Current A.R.S. § 28-4148 mandates weekly EDI reporting to the Division by insurance companies. In this rulemaking, the Division reduces the impact on small insurance companies of EDI X12-811 reporting after July 31, 2001, by the 2 specified exceptions for qualifying companies in R17-4-226(F).

R17-4-226 and R17-4-226.01 have an economic impact on agencies, entities, or groups in Arizona as follows:

- The Division has rulemaking, administrative, and insurance database reprogramming costs; the Division benefits from decreased direct labor costs, including fewer unnecessary insurance verification notices issued and fewer 6-digit dates changed to 8-digit dates;
- The Secretary of State has rule publication costs;
- The Governor's Regulatory Review Council has rule review costs;
- Insurance companies not qualifying for an exception under R17-4-226(F) incur costs of converting to EDI X12-811 reporting determined by whether a company reports by EDI X12 in another state and on the company's computer hardware, software, and personnel; these companies benefit from vehicle owners or lessees motivated by more efficient mandatory insurance enforcement to buy motor vehicle liability insurance, from fewer unnecessary insurance verification notices issued by the Division, and from possibly lower costs for weekly EDI X12 reporting by file transfer protocol or information exchange than for weekly cartridge tape reporting;
- Insurance companies qualifying for an exception under R17-4-226(F) benefit from vehicle owners or lessee motivated to buy motor vehicle liability insurance and from fewer unnecessary insurance verification notices; these companies only voluntarily incur costs for EDI X12 conversion;
- Consumers of motor vehicle liability insurance may have higher premiums if insurance companies pass along their costs but benefit from fewer uninsured motor vehicle accidents and fewer unnecessary insurance verification notices;
- R17-4-226 and R17-4-226.01 do not impose costs on report preparation and submission companies; these companies benefit from increased business opportunities resulting from the insurance company reporting rules;
- Owners or lessees of vehicles with lapsed motor vehicle liability policies incur costs for alternative transportation, proof of future financial responsibility (SR22), and reinstatement fees associated with vehicle registration and number plate suspension; these people also benefit from fewer uninsured motor vehicle accidents; and
- The public benefits from safer Arizona roads and from jobs created in report preparation and submission businesses and in insurance companies that prepare and file their own reports.

Despite costs associated with R17-4-226 and R17-4-226.01, including the shifting of costs to consumers of motor vehicle liability insurance, a net benefit will be realized. The benefits to insurance companies, consumers, report preparation and submission businesses, the public, and the Division from EDI X12 reporting, including fewer 6-digit dates to be changed to 8-digit dates, definitely outweigh the costs. Frequent and efficient reporting of lapsed policies will allow the Division to more readily identify uninsured vehicles and remove these vehicles from the Arizona roads. Everyone ultimately benefits from fewer uninsured motor vehicle accidents.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The Division reconsidered the comments received and reconsidered what is technologically possible. Based on this reconsideration, the final rules delay the deadline for mandatory EDI X12-811 reporting to August 1, 2001. Thus, the final rules mitigate the regulatory impact on insurance companies.

In accordance with A.R.S. § 41-1025, the Division determined that the final rules are not substantially different from the published proposed rules. First, the Division considered the extent to which all persons affected by the rules

Arizona Administrative Register
Notices of Final Rulemaking

should have understood that the published proposed rules would affect their interests, and expressed their understanding in oral and written comments. Insurance companies did submit oral and written comments. Consumers and report preparation and transmission businesses, although afforded the opportunity to comment, did not submit comments. The Division concluded that this failure to comment did not indicate a lack of understanding. Rather, silence from consumers and report preparation and transmission businesses indicated awareness that they are beneficiaries of the R17-4-226 and R17-4-226.01 rulemaking.

The Division also considered the extent to which the subject matter of the final rules, or the issues determined by the final rules, differs from the subject matter or issues involved in the published proposed rules. The Division's format and schedule for reporting by insurance companies constitute the subject matter or issues of both the proposed rules and the final rules.

Finally, the Division considered the extent the effects of the final rules differ from the effects of the published proposed rules if the proposed rules had been made instead. The proposed rules would have required insurance companies not qualifying for an exception to begin EDI X12-811 reporting by August 1, 2000. The final rules give companies that do not qualify for an exception and that do not already report to the Division by EDI X12-811 until August 1, 2001 to begin EDI X12-811 reporting. Allowing additional time to prepare for EDI X12-811 reporting does not compromise reporting by insurance companies to the Division. A cartridge tape report or a manual report, like an EDI X12-811 report, must contain information on all lapsed policies processed by the insurance company during the reporting period. The more cumbersome cartridge tape report or manual report will result in no unreported lapsed policies and no outbreak of uninsured motor vehicle accidents through July 31, 2001.

Based on its A.R.S. § 41-1025 analysis and on the fact that the final rules represent deregulation from the proposed rules, the Division determined that no supplemental notice was necessary.

The Division made the final rules more clear, concise, understandable and consistent with the Arizona Secretary of State's publishing style, and extended the deadline for mandatory EDI X12-811 reporting as follows:

- The order of the Sections affected in #1 of the Preamble, in the table of contents, and in the text of the rules was changed from:

R17-4-226	Repeal
Appendix A	Repeal
R17-4-226	New Section
R17-4-226.01	New Section

to:

R17-4-226	New Section
Appendix A	Repeal
R17-4-226.01	New Section

- References to a subsection within the referencing rule were changed from the full Section citation with the subsection in parentheses to the word "subsection" followed by the subsection letter in parentheses, and where appropriate, the subsection number in parentheses;
- The subsection letters in the definitions of "information exchange," "manual reporting," "network job entry," "reportable activity," and "service provider" in R17-4-226(A), omitted in the published version of the proposed rules, were restored;
- A definition of "private information network" was added;
- R17-4-226(B)(2) was changed from:

If no reportable activities occurred by the reporting date, a declaration of inactivity.

to:

If no reportable activities occurred by the reporting date, a statement of inactivity:

- a. Typed on company letterhead,
- b. Transmitted by e-mail, or
- c. Transmitted by EDI.

- Proposed R17-4-226(C)(1) that provided:

By February 1, 2000, a company not qualified for an exception under R17-4-226(E) shall establish a schedule under R17-4-226(C)(2) or (C)(3) by contacting the Division as follows:

- a. Arizona Department of Transportation, Motor Vehicle Division, Mail Drop 532M, 1801 West Jefferson, Phoenix, Arizona 85007; or
- b. Telephone number 602-712-8308;

Arizona Administrative Register
Notices of Final Rulemaking

became final R17-4-226(C) that provides:

EDI and X12 conversion schedule. By February 1, 2001, a company that submits cartridge tape reporting or manual reporting and does not qualify for an exception under subsection (F), shall establish a schedule under subsection (D)(1) or subsection (D)(2) and the main provision of subsection (E) by contacting the Division as follows:

1. Arizona Department of Transportation, Motor Vehicle Division, Mail Drop 532M, 1801 West Jefferson, Phoenix, Arizona 85007; or
 2. Telephone number (602) 712-8308;
- Proposed R17-4-226(C)(2) and (C)(3) became final R17-4-226(D) EDI types, with the August 1, 2000 date changed to August 1, 2001;
 - Proposed R17-4-226(D) through (G) were re-lettered subsections (E) through (H);
 - The August 1, 2000 date in proposed R17-4-226(D) was changed to August 1, 2001 in final R17-4-226(E);
 - Proposed R17-4-226(E) EDI exceptions became final R17-4-226(F) EDI and X12 exceptions;
 - The July 31, 2000 date and the May 1, 2000 date in proposed R17-4-226(E)(1) were changed to July 31, 2001, and February 1, 2001, in final R17-4-226(F)(1);
 - The July 31, 2000 date and the May 1, 2000 date in proposed R17-4-226(E)(2) were changed to July 31, 2001, and February 1, 2001, in final R17-4-226(F)(2);
 - The phrase “notice sent under R17-4-226(C)(1)” in proposed R17-4-226(G)(2) was corrected to “notice sent under subsection (H)(1)” in final R17-4-226(H)(2);
 - The August 1, 2000 date in R17-4-226.01(A) was changed to August 1, 2001; and
 - The July 31, 2000 date in R17-4-226.01(D) was changed to July 31, 2001.

11. A summary of the principal comments and the agency response to them:

On February 9, 2000, Allstate Insurance Company commented, through its attorney, that EDI X12 reporting by August 1, 2000 is too soon because:

Allstate writes auto insurance in states across the country. Many other states are requiring computer reporting similar to this proposed rulemaking. Each state, however, has different requirements and different timeframes. As Allstate attempts to satisfy these requirements, it must allocate its limited information technology staff accordingly. The short Arizona deadline makes this impossible.

In its February 14, 2000 letter to Allstate’s attorney, the Division stated that:

- August 1, 2000 represents more than 2 years after A.R.S. § 28-4148 was amended to require EDI reporting, and the Division must give effect to the requirement of the insurance company reporting law;
- Maximizing the number of companies reporting in the standard Y2K-compliant format for insurance information, X12, benefits insurance companies, the public, and the Division;
- EDI X12 reporting would automatically return to Allstate policy records identified in its reports that do not match the Division’s records, reducing the number of unnecessary insurance verification notices issued by the Division;
- The Division’s research indicates that Oregon requires EDI X12 reporting by insurance companies that cover 1,000 or more vehicles, making it probable that Allstate has been submitting reports in the Oregon X12 format, similar to the Division’s X12 format, since 1997; and
- The Division cannot delay beyond August 1, 2000 the requirement of EDI X12 reporting by insurance companies not qualifying for an exception; however, the Division will work with Allstate to establish a schedule for converting to EDI X12.

On February 14, 2000, Atlantic Mutual Companies commented that they favor monthly reporting and exemption of small insurance companies from the reporting requirements until they can report electronically. The Division responded on February 15, 2000, explaining that A.R.S. § 28-4148 requires insurance companies writing motor vehicle liability policies in Arizona to submit weekly reporting and that the Division’s administrative rules on insurance company reporting must give effect to § 28-4148. [Proposed] R17-4-226(E) [final R17-4-226(F)] provides exceptions from EDI X12 reporting to accommodate small insurance companies and to reduce the impact on small insurance companies. The Division cannot exempt Atlantic Mutual Companies from reporting or from weekly reporting; however, the Division encourages Atlantic Mutual Companies to participate in EDI X12 reporting, and Division personnel will work with Atlantic Mutual Companies to establish a schedule for converting to EDI X12.

At the February 15, 2000 oral proceeding in Phoenix, Arizona, Allstate’s attorney stated that his client faces similar reporting requirements in New York and Maryland that create a resource allocation problem. Therefore, Allstate is requesting understanding from the Division as the August 1, 2000 date approaches. Division employee Charles Ramsey stated that the Division is looking for a “good faith effort” by an insurance company.

Arizona Administrative Register
Notices of Final Rulemaking

The Division subsequently reconsidered the comments received and reconsidered what is technologically possible. Based on this reconsideration, for the final rules, the Division delayed the deadline for mandatory EDI X12-811 reporting to August 1, 2001.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Arizona Adaptation of X12 (TS811) for Policy Receipt, September 24, 1999, incorporated by reference at R17-4-226.01(A).

Arizona Adaptation of X12 (TS811) for Policy Error Return, September 24, 1999, incorporated by reference at R17-4-226.01(B).

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE DIVISION**

ARTICLE 2. TITLES AND REGISTRATION

Section

R17-4-226. Insurance Company Reporting Requirements

Appendix A. Cartridge Tape Specifications and Reporting Format Through July 31, 1999 Repealed

R17-4-226.01. Reporting Formats, Cartridge Tape Specifications, and Required Information for Manual Reporting

ARTICLE 2. TITLES AND REGISTRATION

R17-4-226. Insurance Company Reporting Requirements

A. Definitions.

In this Section and in R17-4-226.01, unless the context otherwise requires:

1. "Business week" means Monday through Friday, except holidays.
2. "Cartridge tape" means a data delivery medium that conforms to the cartridge tape specifications stated at R17-4-226.01(C).
3. "Cartridge tape reporting" means weekly delivery from a company to the Division of data placed on cartridge tape.
4. "Company" means an insurance or indemnity company authorized to write motor vehicle liability coverage in Arizona.
5. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
6. "Electronic data interchange" or "EDI" means the transmission of data in a standardized format from 1 computer to another computer without magnetic tape.
7. "EDI reporting" means weekly computer-to-computer transmission of data from a company to the Division, followed by error return from the Division to the company.
8. "File transfer protocol" means EDI reporting transmitted to the Division over the Internet.
9. "Information exchange" means EDI reporting where:
 - a. A company or a service provider transmits a report to the Division through a connection to a private information network, and
 - b. The private information network bases the charges for the connection to the network on the number of characters and messages transmitted.
10. "Manual reporting" means weekly delivery from a company to the Division of:
 - a. A report typed on company letterhead, or
 - b. An e-mail report.
11. "Motor vehicle liability policy" has the meaning prescribed in A.R.S. § 28-4001(4).
12. "Network job entry" means EDI reporting where:
 - a. A company or service provider transmits a report to the Division through a connection to a private information network, and
 - b. The private information network bases the charges for the connection to the network on the installation and lease of a dedicated communications line.
13. "Private information network" means a group of interconnected computers, including the hardware and software used to connect them.

Arizona Administrative Register
Notices of Final Rulemaking

14. "Reportable activity" means:
 - a. A policy cancellation.
 - b. A policy nonrenewal.
 - c. A new policy issue.
 - d. A vehicle added to a policy.
 - e. A vehicle deleted from a policy, or
 - f. A policy reinstatement.
15. "Service provider" means a person or entity that provides:
 - a. A connection to a private information network for EDI reporting, or
 - b. Cartridge tape reporting for a company.
16. "X12-811" means the standard format for delivering or transmitting insurance data.
- B.** Reporting schedule. At least once each business week, a company shall submit to the Division:
 1. All reportable activities, not previously reported, processed by the company 7 or fewer days before the reporting date;
or
 2. If no reportable activities occurred by the reporting date, a statement of inactivity:
 - a. Typed on company letterhead.
 - b. Transmitted by e-mail, or
 - c. Transmitted by EDI.
- C.** EDI and X12 conversion schedule. By February 1, 2001, a company that submits cartridge tape reporting or manual reporting and does not qualify for an exception under subsection (F), shall establish a schedule under subsection (D)(1) or subsection (D)(2) and the main provision of subsection (E) by contacting the Division as follows:
 1. Arizona Department of Transportation, Motor Vehicle Division, Mail Drop 532M, 1801 West Jefferson, Phoenix, Arizona 85007; or
 2. Telephone number (602) 712-8308.
- D.** EDI types. Beginning August 1, 2001, a company shall submit the information required under subsection (B)(1) by EDI reporting, unless qualified for an exception under subsection (F).
 1. For EDI reporting by information exchange or network job entry, a company shall:
 - a. Obtain:
 - i. A connection to a private information network, or
 - ii. A service provider;
 - b. Obtain any necessary software;
 - c. Obtain the Division's service provider account number; and
 - d. Arrange for and conduct an initial transmission of data to the Division.
 2. For EDI reporting by file transfer protocol, a company shall:
 - a. Obtain:
 - i. An on-line connection to the Internet, or
 - ii. A service provider;
 - b. Obtain the Division's Internet address; and
 - c. Arrange for and conduct an initial transmission of data to the Division.
- E.** Reporting formats. Beginning August 1, 2001, a company shall submit the information required under subsection (B)(1) in the format titled Arizona Adaptation of X12 (TS811) for Policy Receipt, incorporated by reference at R17-4-226.01(A), unless qualified for an exception under subsection (F).
 1. If qualified for an exception under subsection (F)(1), a company shall submit cartridge tape reporting:
 - a. On a cartridge tape that meets the specifications of R17-4-226.01(C), and
 - b. In the format located at R17-4-226.01(D).
 2. If qualified for an exception under subsection (F)(2), a company shall submit manual reporting with all the information listed in column 1 of the format located at R17-4-226.01(D).
- F.** EDI and X12 exceptions. A company shall submit weekly EDI reporting in the format titled Arizona Adaptation of X12 (TS811) for Policy Receipt unless qualified for an exception under this subsection.
 1. For cartridge tape reporting after July 31, 2001, a company shall affirm in writing by February 1, 2001, and by February 1 of each following year, that:
 - a. The company had fewer than 10,000 motor vehicle liability policies in place in Arizona on January 1 of the year;
 - b. The company does not submit EDI reporting to any other state; and
 - c. The company will sustain a financial burden from EDI reporting.
 2. For manual reporting after July 31, 2001, a company shall affirm in writing by February 1, 2001, and by February 1 of each following year, that:
 - a. The company had fewer than 100 motor vehicle liability policies in place in Arizona on January 1 of the year;
 - b. The company does not submit EDI reporting or cartridge tape reporting to any other state; and
 - c. The company will sustain a financial burden from either EDI reporting or cartridge tape reporting.

Arizona Administrative Register
Notices of Final Rulemaking

3. An officer or director of a company shall sign a written affirmation made under subsection (F)(1) or subsection (F)(2).
4. A company shall submit the signed affirmation to the Arizona Department of Transportation, Motor Vehicle Division, Mail Drop 532M, 1801 West Jefferson, Phoenix, Arizona 85007.
5. A company that qualifies for an exception to EDI reporting under subsection (F)(2) shall obtain the Division's approval of the type of manual reporting used by the company.

G. Error return. The Division shall return reporting errors to a company as follows:

1. If a company uses the Arizona Adaptation of X12 (TS811) for Policy Receipt, the Division shall use the Arizona Adaptation of X12 (TS811) for Policy Error Return, incorporated by reference at R17-4-226.01(B), to return reporting errors to the company after submission of the information required under subsection (B)(1); or
2. If a company qualifies for an exception under subsection (F), the Division shall instruct the company to correct cartridge tape reporting errors or manual reporting errors that affect the Division's processing of the information required under subsection (B)(1).

H. Noncompliance procedures. If a company fails to submit the information required under subsection (B)(1), the Division shall:

1. Send a dated written notice to the company that:
 - a. Identifies the business week when the company did not submit the information required under subsection (B)(1);
 - b. Instructs the company to submit the information for the identified business week by 7 days after the date of the notice; and
 - c. Warns the company to comply with the notice or the Division will proceed under A.R.S. § 20-237; and
2. If the company does not comply with the notice sent under subsection (H)(1), proceed under A.R.S. § 20-237.

Appendix A. Cartridge Tape Specifications and Reporting Format Through July 31, 1999

Cartridge Tape Specifications

Record Length	197 Bytes
Blocking Factor	1970 (10 records per block)
Tape Medium	Standard IBM 3480 Cartridge
Tape Density	Standard 3480, Not Compressed
Tape Internal Label	NL (Nonlabeled tapes)

Reporting Format Through July 31, 1999

<i>Information Required</i>	<i>Bytes</i>	<i>Field Type</i>	<i>Field Description</i>
VIN { except as provided in A.R.S. § 28-4148(D) }	25	Alpha/Numeric	Complete VIN, left justified
Make	5	Alpha	
Year	2	Numeric	
Cancel Date	6	Numeric	MMDDYY (all zeroes for new issues; no future dates for cancellations)
Policy Number	30	Alpha/Numeric	Left Justified
Insurance Code	4	Numeric	
Name (Last, First)	40	Alpha/Numeric	Left Justified
Address	40	Alpha/Numeric	Left Justified
City	25	Alpha/Numeric	Left Justified
State	2	Alpha	
Zip Code	9	Numeric	Left Justified
Driver's License Number	9	Alpha/Numeric	Left Justified, optional

R17-4-226.01. Reporting Formats, Cartridge Tape Specifications, and Required Information for Manual Reporting

- A.** X-12 reporting format. Beginning August 1, 2001, a company not qualifying for an exception under R17-4-226(F) shall submit EDI reporting in the format titled Arizona Adaptation of X12 (TS811) for Policy Receipt, September 24, 1999, incorporated by reference and on file with the Division and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
- B.** X-12 error return format. To return errors to a company using the format specified at subsection (A), the Division shall use the format titled Arizona Adaptation of X12 (TS811) for Policy Error Return, September 24, 1999, incorporated by reference and on file with the Division and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

Notices of Final Rulemaking

- C.** Cartridge tape specifications. A cartridge tape used for reporting by a company to the Division shall meet the following specifications:

<u>Record Length</u>	<u>197 Bytes</u>
<u>Blocking Factor</u>	<u>1970 (10 records per block)</u>
<u>Tape Medium</u>	<u>Standard IBM 3480 Cartridge</u>
<u>Tape Density</u>	<u>Standard 3480, Not Compressed</u>
<u>Tape Internal Label</u>	<u>NL (Nonlabeled tapes)</u>

- D.** Cartridge tape format. A company may use the following reporting format only through July 31, 2001, unless the company qualifies for an exception under R17-4-226(F)(1):

<u>Information Required</u>	<u>Bytes</u>	<u>Field Type</u>	<u>Field Description</u>
<u>VIN [except as provided in A.R.S. § 28-4148(D)]</u>	<u>25</u>	<u>Alpha/Numeric</u>	<u>Complete VIN, left justified</u>
<u>Make</u>	<u>5</u>	<u>Alpha</u>	
<u>Year</u>	<u>2</u>	<u>Numeric</u>	
<u>Cancel Date</u>	<u>6</u>	<u>Numeric</u>	<u>MMDDYY (all zeroes new issues; no future dates for cancellations)</u>
<u>Policy Number</u>	<u>30</u>	<u>Alpha/ Numeric</u>	<u>Left Justified</u>
<u>Insurance Code</u>	<u>4</u>	<u>Numeric</u>	
<u>Name (Last, First)</u>	<u>40</u>	<u>Alpha/Numeric</u>	<u>Left Justified</u>
<u>Address</u>	<u>40</u>	<u>Alpha/Numeric</u>	<u>Left Justified</u>
<u>City</u>	<u>25</u>	<u>Alpha/Numeric</u>	<u>Left Justified</u>
<u>State</u>	<u>2</u>	<u>Alpha</u>	
<u>Zip Code</u>	<u>9</u>	<u>Numeric</u>	<u>Left Justified</u>
<u>Driver's License Number</u>	<u>9</u>	<u>Alpha/Numeric</u>	<u>Left Justified, optional</u>

- E.** Manual reporting requirements. A company that qualifies for an exception under R17-4-226(F)(2) shall provide all the information listed in column 1 of the format located at subsection (D).